TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 435

FEDERAL TRADE COMMISSION, PETITIONER,

vs.

NATIONAL CASUALTY COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 6, 1957

CERTIORARI GRANTED NOVEMBER 12, 1957

SUPREME COURT OF THE UNITED STATES

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[fol. a]

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

NATIONAL CASUALTY COMPANY, a Corporation, Petitioner and Appellant,

vs.

FEDERAL TRADE COMMISSION, Respondent and Appellee

Petition to Review Decision of the Federal Trade Commission

Appendix for Appellant

[fol. 1] BEFORE THE FEDERAL TRADE COMMISSION

RELEVANT DOCKET ENTRIES

1955

Mar. 21. Complaint served.

April 18. Answer filed.

May 10, 11. Hearing before Hearing Examiner.

June 13. Hearing Examiner's Order Amending Complaint filed.

July 18. Motion by respondent to Dismiss Complaint filed.

Aug. 24. Hearing Examiner's Order Denying Motion to Dismiss Complaint filed.

Oct. 12, 13. Hearing before Hearing Examiner.

Dec. 8. Hearing Examiner's Initial Decision filed.

Dec. 19. Notice of Appeal by counsel supporting complaint filed.

Dec. 27. Notice of Appeal by respondent filed.

1956

May 21. Opinion of Commission filed.

May 21. Final Order of Commission filed (served on respondent May 31, 1956).

July 30. Petition of respondent National Casualty Company to Review Order of Commission filed in the United States Court of Appeals for the Sixth Circuit.

[fol. 2] BEFORE THE FEDERAL TRADE COMMISSION

COMPLAINT—Filed March 11, 1955

Pursuant to the provisions of the Federal Trade Commission Act, as that Act is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (Title 15, U. S. Code, Sections 1011 to 1015, inclusive), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that National Casualty Company, a corporation, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph One: Respondent, National Casualty Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at Detroit 26, Michigan.

Paragraph Two: Respondent is now and for more than two years last past has been, engaged as an insurer in the business of insurance in commerce, as "commerce" is defined in the Federal Trade Commission Act, by entering into insurance contracts with insureds located in various states of the United States other than the State of Michigan, in which states the business of insurance is not regulated by state law to the extent of regulating the practices of respondent alleged in this complaint to be illegal. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said insurance policies in commerce between and among the several states of the United States.

[fol. 3] Respondent during the two years last past has issued a variety of policies providing indemnification for losses resulting in accidental injury and sickness including those identified and designated by it as Policy Form Numbers 950-3G 12-150, 970-36(S.P.) 1-5-53, 8005(S.P.) 4-17-53, 8011-36 6-3-53, 8008(S.P.) 6-15-48, 8010-36 2-17-53, 429-36 1-24-49, 999-36(S.P.) 1-7-53, 968-36(S.P.) 8-18-53, N-430 (S.P.) 1-3-45, 8020 10-12-53, 8019 4-27-51, 8000-36 5-2-51, 955(S.P.) 12-9-40, 8013(S.P.) 1-9-52, 8006(S.P.) 7-30-53,

8007(S.P.) 4-17-53, 8014(S.P.) 12-12-52, 8021 5-8-52, 8018 3-6-51 and 8023 8-19-53.

Respondent is licensed, as provided by respective state laws, to engage in the business of insurance, as heretofore generally described, in all 48 states of the United States, the District of Columbia and the Territory of Hawaii.

Paragraph Three: In the course and conduct of its said business, and for the purpose of inducing purchasers of said insurance policies, respondent has made, and is now making, numerous statements and representations concerning the benefits provided in said policies of insurance, by means of newspaper advertisements, stuffers, circulars, folders, and other advertising material distributed throughout the various states of the United States. Typical, but not all inclusive of said statements and representations, are the following:

1. "No Increase in Premium Because of Age
No Decrease in Benefits Because of Age"
"For Employed Men and Women Ages 16 to 69 years inclusive"

[fol. 4] "For—Individuals or Family Groups—Ages 1 day to 69 years"

"I understand this peace of mind and security will be mine from the first day—even for life."

2. "No Medical Examination Required"
3. "The Most Complete Coverage at the Lowest Rates! Monthly Benefits up to $300.00 Per Month Paid from First Day of Any Sickness or Accident *Plus* $300 Per Month for Hospitalization"

"Hospital Room and Board for 100 days for each sickness or accident. Your choice of plans paying from $5.00 to $12.50 per day. Pays full benefit even if your hospital room costs less!"

"[$15.00 per day] For Hospital Room and Board for 100 Days (Each Disability)"

4. "Surgical Operations, whether performed in or out of the hospital, are paid up to $300.00 In Addition

To Hospital Benefits! Full benefits are paid to all insured members of the family group."

"*Surgery Bills* from $5.00 to $300.00 for sickness or accident."

5. "*Here's What We Would Pay You!*

Monthly Income up to $300.00 for Total Disability from Sickness paid from First Day for Two Years with no *Confinement Required at Any Time.*

Monthly Income up to $300.00 for Total Accident or Confining Sickness Disability paid from *First Day* for as long as totally disabled—*Even For Life.*

"When You are Disabled by Accident or Sickness—
What do You Need Most?

Cash!

[fol. 5] Economy Disability Policy

The Simple Economical Way to Obtain Basic Income Protection

Sound Protection—Low Cost.

for Accident Income $ per month
Accident Total Disability—Full Monthly Benefit for Twelve Months.

Partial Disability—One-half Monthly Benefit For One Month.

for Sickness Income $ per month
Sickness Confining Total Disability—Full Monthly Benefit for Six Months.

Non-Confining Total Disability—Full Monthly Benefit for One Month"

"Your Security . . .
If Injured or Sick

You are protected while at work or away from work—Benefits paid in addition to Compensation and Group Insurance—24 hour every day protection

. . . . . .

Guaranteed Monthly Income for accidents
Guaranteed Monthly Income for sickness"

Paragraph Four: Through the use of such statements and representations, and others of similar import and meaning not specifically set out herein, respondent represents and has represented, directly or by implication:

1. That the policies containing indemnification against losses resulting from sickness or accident can and will be continued, at the option of the insured, until the age of 69 by making premium payments within the time and in the amounts provided by the policy.

2. That in determining whether or not the cash benefits provided for in said insurance policies are payable for losses resulting from sickness or accident that might arise after the effective date, the respondent will not take into [fol. 6] consideration the physical condition of insured prior to or at the time the policy is issued.

3. That said insurance policies provide indemnification in the form of cash benefits to the insured for hospitalization expenses for a definite period of time, if confined in a hospital by any sickness or accident.

4. That said insurance policies provide indemnification for all operations necessitated by any one case of sickness or accident up to a maximum of $300.00.

5. That said insurance policies provide for the payment of monthly indemnification in a specific amount for a definite period of time to insured for loss of time from work by total disability resulting from any accident or sickness.

Paragraph Five: The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

1. Policies containing indemnification against loss resulting from accident and sickness cannot be continued until the age of 69, or any other age, at the option of the insured by the timely and required payment of premiums, but, on the contrary, respondent may refuse to accept any premium payment or give insured written notice of cancellation for any reason or no reason at all, thus terminating such policies.

2. The respondent, by the terms of said policies, does take into consideration the physical condition of the insured prior to or at the time the policies were issued in determining whether or not the cash benefits provided by said in-

surance policies will be paid for loss resulting from sickness or accident after the effective date. The insuring clause [fol. 7] of each of said policies in effect provides that no benefits are payable for any loss resulting from sickness, the cause of which is traceable to a condition existing prior to or within fifteen to thirty days after the effective date of the policy. The insuring clauses, in providing for the payment of a cash benefit for a loss resulting from accident, state that the loss shall result "directly and independently of all other clauses" from accidental bodily injury.

3. Said insurance policies do not provide indemnification in the form of cash benefits to the insureds for hospitalization expenses for a definite period of time, if confined in a hospital by any sickness or accident. On the contrary, said policies provide that no hospital indemnification is payable for any loss due to sickness, the cause of which is traceable to a condition existing prior to the date of the policy or within 30 days after the date of the policy, or 15 days after the date of the policy, and for any accident unless bodily injury is effected directly and independently of all other causes by accidental means.

All of said insurance policies have a provision therein which excepts the liability of the respondent when the loss is caused by certain circumstances, injuries or sickness, such as injury due to the hazards of warfare, suicide or any attempt thereat, while sane or insane, venereal disease or syphilis, any injury or sickness for which benefit is provided by the Workman's Compensation or Occupational Disease Act or Law, pregnancy, including resulting childbirth or miscarriage, or air travel of any character except in a limited way.

Certain of said insurance policies provide that cash bene- [fol. 8] fits are not payable for any loss caused by appendicitis, tonsillitis, or diseases of the female generative organs unless the loss occurs after the policy has been maintained in continuous force for six months. Some of said insurance policies, by the terms thereof, limit the number of days for which loss will be payable for pregnancy, including resulting childbirth or miscarriage, or injury to or disease of the female generative organs to a lesser period than the stated definite period of time.

4. Said insurance policies do not provide indemnification

for operations necessitated by any one case of sickness or accident up to a maximum of $300, unless the operation is one of the six listed in the "Schedule of Operations" having a maximum benefit of $300.00. Said "Schedule of Operations" list ninety operations but in a great majority the maximum provided ranges from $5.00 to $50.00. Said insurance policies provide that only the indemnification for one operation performed because of any one accident or sickness or through the same incision shall be paid.

Said insurance policies provide that no indemnification shall be paid for an operation when the sickness, which necessitates the operation, is traceable to a condition existing prior to or within thirty days after the date of the policy, or for injury unless effected directly and independently of all other causes through accidental means. No loss is payable, under the terms of said policies, for injury due to hazards of warfare, venereal disease, syphilis, any injury or sickness for which benefit is provided under any Workman's Compensation or Occupational Disease Act or Law, any loss caused by air travel of any character excepted in a limited manner. No surgical indemnification shall be payable for tonsillectomy or adenoidectomy unless the loss [fol. 9] occurs after the policy has been maintained in force for six months from the effective date.

5. Said insurance policies do not provide for the payment of monthly indemnification in a specific amount for a definite period of time to the insured for loss of time from work by total disability resulting from any accident or sickness. On the contrary, it is provided that loss of time benefits shall not be payable if caused by any sickness, the cause of which is traceable to a condition existing prior to, or within thirty days after the date of the policy, or forty days after date of the policy, or by any accident unless bodily injury is sustained directly and independently of other causes other than accidental means, or resulting solely from bodily injuries effected directly and independently of all other causes by the happening of an external, violent and accidental event.

Said insurance policies provide that, to be eligible for disability payments as a result of accident, loss of time shall be total, and shall immediately after the accident continuously and wholly prevent the insured from per-

forming any and every duty pertaining to his business or occupation, or be prevented from engaging in any and every occupation or employment from the date of the accident, or five days from date of accident, or fifteen days from date of the accident, or twenty days from date of accident, or thirty days from date of accident, and require the regular care and personal attention of a physician or surgeon.

The said insurance policies provide that to be eligible for loss of time payments, in cases of sickness, the insured must be wholly and continuously disabled by such sickness [fol. 10] and be prevented from performing any and every duty pertaining to any and every occupation or employment, require the care and personal attendance of a physician or surgeon, and in some policies, the sickness shall necessarily and continuously confine the insured within the house.

All of said insurance policies have a provision therein, which by its terms, excludes certain injuries or sickness such as, injury due to the hazards of warfare, venereal disease, syphilis, any injury to or disease of the female generative organs, injuries sustained or sickness contracted outside the continental limits of the United States of America or Canada, and hernia of any kind, however caused.

Certain of said policies contain provisions limiting the indemnification and shortens the stated period of time for which the loss of time indemnification will be paid in the event of certain accidents and sickness. Sunstroke, freezing, felons, abscesses, blood-poison or contact with a poisonous substance shall be covered by the sickness clause only, which provides cash benefits for a shorter period of time than is provided by loss of time caused by accident.

It is provided, under the terms of said insurance policies, that the loss of time indemnification shall not be paid in the event one of the benefits for loss of limb or sight is paid or after one of such losses has been paid.

Paragraph Six: The use by the respondent of the aforesaid false and misleading statements and representations, with respect to the terms and conditions of its said policies, and its failure to reveal the limitations of said coverage found in said policies have had, and now have, a tendency

[fol. 11] and capacity to mislead and deceive and have misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations were and are true, and to induce such portions of the purchasing public to purchase a substantial number of said insurance policies by reason of said erroneous and mistaken belief.

Paragraph Seven: The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Wherefore, The Premises Considered, the Federal Trade Commission on this 11th day of March, A. D., 1955, issues its complaint against said respondent.

NOTICE

Notice is hereby given you, National Casualty Company, respondent herein, that the 10th day of May, A. D., 1955, at 10 o'clock is hereby fixed as the time and Detroit, Michigan as the place when and where a hearing will be had before Frank Hier, a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on [fol. 12] or before the twentieth (20) day after service of it upon you. Such answer shall contain a concise statement of the facts which constitute the ground for defense and shall specifically admit or deny each of the facts alleged in the complaint unless you are without knowledge, in which case you shall so state. Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Such answer will constitute

a waiver of any hearing as to the facts alleged in the complaint and findings as to the facts and conclusions based upon such answer shall be made and order entered disposing of the matter without any intervening procedure. The respondent may, however, reserve in such answer the right to submit proposed findings and conclusions of fact or of law under Rule XXI, and the right to appeal under Rule XXIII.

Failure to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission and Hearing Examiner Frank Hier, without further notice, to find the facts to be as alleged herein and to issue the following order in this proceeding:

It Is Ordered that respondent, National Casualty Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, [fol. 13] as "commerce" is defined in the Federal Trade Commission Act, of any accident, health, hospital or surgical insurance policy do forthwith cease and desist from:

(A) Representing, Directly or by implication:

(1) That said insurance policy may be continued in effect indefinitely or for any period of time, when, in fact, said policy provides that it may be canceled by respondent or terminated under any circumstances over which insured has no control, during the period of time represented.

(2) That no medical examination is required or that applicant's health is not a factor, unless the representation is clearly and conspicuously limited in immediate connection therewith to payment of insurance on claims not caused by previous conditions of health of the insured.

(3) That said policy provides for indemnification to insureds in cases of sickness or accident generally or in any or all cases of sickness or accident, when such is not a fact.

(4) That said policy will pay in full, or in any specified amount or will pay up to any specified amount for any medical, surgical or hospital service unless the policy provides that the actual cost to insured for that service will be paid in all cases to the amount represented.

[fol. 14] (5) That said policy of insurance provides a monthly or cash benefit to insureds, when disabled by sickness or accident, for a longer period of time or in a larger amount than is in fact provided.

(6) That said policy provides for cash benefits for loss of time from work or otherwise in cases of sickness or accident generally in any or all cases of sickness or accident when said policy does not provide for such benefits in all such cases.

(B) Misrepresenting in any other manner or by any other means the terms or provisions of said insurance policy.

The inclusion of such order to cease and desist in this complaint will be without effect in the event you show cause, on or before the 10th day of May, A. D., 1955, why such order should not issue.

In Witness Whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 11th day of March, A. D., 1955.

By the Commission. (s) Robert M. Parrish (t)
Robert M. Parrish, Secretary.

[fol. 15] BEFORE THE FEDERAL TRADE COMMISSION

ANSWER—Filed April 18, 1955

Respondent, through its attorney, John F. Langs, alleges that the Federal Trade Commission is without jurisdiction in this matter because every activity of the respondent is regulated and supervised by the Insurance Commissioner and the Department of Insurance of the State of Michigan, which under Michigan State Law fully regu-

lates all the activities of the respondent within the scope and meaning of Public Law 15 enacted by the Congress of the United States, and for further answer respondent states:

I

Respondent admits the allegations of paragraph 1.

II

Respondent admits that is it licensed and engaged as an insurer in the business of insurance, entering into insurance contracts with insureds in all 48 States of the United States, and the District of Columbia and the Territory of Hawaii, but denies that it is doing business without regulation by State Law to the extent required by Public Law 15.

Respondent admits that it has, during the last 2 years, issued a variety of policies providing indemnification for losses resulting in accidental injury and sickness, including those identified by policy form numbers as follows:

Policy Form Numbers 950-3G 12-1-50; 970-3G (S.P.) 1-5-53; 8005 (S.P.) 4-17-53; 8011-3G 6-3-53; 808 (S.P.) 6-15-48; 8010-3G 2-17-53; 429-3G 1-24-49; 999-3G (S.P.) 1-7-53; 968-3G (S.P.) 8-18-53; N-430 (S.P.) 1-3-45; 8020 10-12-53; 8019 4-27-61; 8000-3G 5-2-51; 955 (S.P.) [fol. 16] 12-9-40; 80013 (S.P.) 1-9-52; 8006 (S.P.) 7-30-53; 8007 (S.P.) 4-17-53; 8014 (S.P.) 12-12-52; 8021 5-8-52; 8018 3-6-51 and 8023 8-19-53.

As to all other matters alleged in paragraph 2, respondent denies the same.

III

Respondent admits that the factual statements to paragraph 3 are substantially correct, although set forth out of context, but denies the legal conclusions of law therein contained.

IV

(1) Respondent denies that it has represented, directly, or by implication, that its policies containing indemnification against losses resulting from sickness or accident can be continued at the option of the insured.

(2) Respondent denies that it has represented directly, or by implication, that it will not take into consideration the physical condition of the insured prior to or at the time the policy is issued.

(3) Respondent admits that its policies state and provide indemnification for hospitalization caused by sickness or accident, as set forth in the policies, and the amounts stated therein are paid upon the conditions therein set forth; but respondent denies that it has represented directly, or by implication, that its policies do not have exceptions which eliminate claims for unjust enrichment on the part of the insured.

(4) Respondent denies that it has represented directly, or by implication, that its insurance policies provide indemnification for all operations necessitated by any one [fol. 17] case of sickness or accident up to a maximum of $300.00.

(5) Respondent denies that it has represented directly, or by implication, that its insurance policies provide for payment of monthly indemnification in a specific amount for a definite period of time to insured for loss of time from work for total disability resulting from any accident or sickness.

V

(1) Respondent denies the allegations and conclusions set forth in this sub-paragraph.

(2) Respondent denies the allegations and conclusions set forth in this sub-paragraph.

(3) Respondent denies the allegations and conclusions set forth in this sub-paragraph.

(4) Respondent denies the allegations and conclusions set forth in this sub-paragraph.

(5) Respondent denies the allegations and conclusions set forth in this sub-paragraph.

In further answer to paragraph V the respondent depends upon the applicant to tell the truth and the whole truth as he knows the truth in his application, and the applicant's untruthfulness or fraud and pre-existing illness are the only reasons for non-payment of benefits if they would otherwise be due and payable. For respondent to act otherwise would permit the insured to benefit by way of unjust

enrichment as a reward for deceit and fraud, and, further, that all conditions of the policies are set forth in said policies clearly and distinctly, and that the advertising of the [fol. 18] respondent is subject to examination by the Insurance Commissioner of the Department of Insurance for the State of Michigan.

VI

Respondent denies each and every allegation set forth in this paragraph.

VII

Respondent denies each and every allegation set forth in this paragraph.

Respondent further states that it has participated in the highest standards of advertising established by health and accident insurance companies and has constantly sought by meetings with other insurance companies to ever improve the high standard of advertising in this field of insurance, and from time to time is in the continuous process of altering and amending its insurance to conform to the high standards so determined by health and accident insurance companies.

Wherefore, respondent respectfully prays that the complaint filed by the Federal Trade Commission against it be forthwith dismissed.

(s) John F. Langs, Attorney for Respondent, 2508 Guardian Building, Detroit 26, Michigan, Woodward 2-9460.

Date: April 15, 1955.

[fol. 19] BEFORE THE FEDERAL TRADE COMMISSION

ORDER AMENDING THE COMPLAINT—Entered June 13, 1955.

It having been shown that certain insurance policies set out in subparagraph (2) of Paragraph Two of the complaint were erroneously designated and counsel supporting the complaint having moved that the complaint be amended to correctly designate said policies and counsel for respondent having expressed no objection to such correction by amendment;

It Is Ordered that subparagraph (2) of Paragraph Two be amended by changing the designations of the policies therein set out as follows:

Change	"950-30"	to	"950-3G"
"	"970-36"	to	"970-3G"
"	"8011-36"	to	"8011-3G"
"	"8010-36"	to	"8010-3G"
"	"429-36"	to	"429-3G"
"	"999-36"	to	"999-3G"
"	"968-36"	to	"968-3G"
"	"8000-36"	to	"8000-3G"

(s) Frank Hier, (t) Frank Hier, Hearing Examiner.

Washington, D. C., June 13, 1955.

[fol. 20] BEFORE THE FEDERAL TRADE COMMISSION

Excerpts from Transcript of Testimony

(Excerpts from the testimony of witnesses taken in the matter herein before the Honorable Frank Hier, Trial Examiner, for the Federal Trade Commission, in Court Room 859, Federal Building, Detroit 26, Michigan, commencing on May 10, 1955.)

APPEARANCES:

John W. Brookfield, Jr. and Donald K. King, Attorneys for the Federal Trade Commission.

John F. Langs, 2508 Guardian Building, Detroit, Michigan, Attorney for the respondent, National Casualty Company.

PROCEEDINGS

COLLOQUY RE EXHIBITS, ETC.

Trial Examiner Hier: Are counsel ready?

Mr. Brookfield: I am ready. Mr. Examiner, this is Mr. John F. Langs.

Trial Examiner Hier: I take it, Mr. Langs, that you are familiar with administrative procedure generally and the Federal Trade Commission specifically.

Mr. Langs: I believe I am.

Trial Examiner Hier: I will say this, however, unless [fol. 21] there is some strenuous objection from counsel on either side, to avoid the necessity of taking specific exceptions each time, which does nothing but make the reporter rich, you will have an automatic exception, both sides, to everything I say or do in this case. Is that agreeable?

Mr. Langs: That's agreeable. I was going to ask whether or not we could have that understanding.

Trial Examiner Hier: Yes. Anything that's on the record in this case or anything that you ask me to put on the record which occurs off the record, I will be glad to do so.

Very well, Mr. Brookfield.

Mr. Langs: May I, before the commencement of this particular proceeding, ask that we put in the record, in the first paragraph of the Answer which respondent has filed, we set forth a question of jurisdiction.

Trial Examiner Hier: All right.

Mr. Langs: And I would like to, at this time, urge the question of jurisdiction as far as this particular proceeding is concerned.

Trial Examiner Hier: Well, Mr. Langs, I have gone through the legislative history of this Public Law 15. I have studied the Law and I have seen a number of recent cases pending down there and I don't see how I can possibly determine jurisdiction in this type of case until I get some facts. There is affirmatively alleged here facts which in connection with the laws of each state, the proponents claim establish the jurisdiction; namely, that state laws do not regulate the practices claimed herein. I don't see how that can be determined on contradictory assertions by counsel. [fol. 22] I can't. So I have to get some facts first. It's their burden to prove the jurisdiction naturally. It's no burden on you to disprove it. They will have to show me in each instance that in each state, the particular state law does not regulate either directly or by clear inference the practices alleged in this complaint. It's quite a burden, I might say.

I might say to you, gentlemen, also, I am convinced from reading the legislative history of this Act, that if there is a grant of power by the legislature, for my purposes that would be sufficient. I will not go into the question of how

that power is exercised, used or enforced. If you inquire into nonfeasance, misfeasance and malfeasance of each state insurance commissioner, we'd run this case forever and never get anywhere with it. So if there's a grant of power and that power or that legislative act covers the practices alleged in this complaint, that state is out so far as this case is concerned.

Now, I leave the door open for you to convince me that I am wrong, but Senator McCarran's remarks at the time this bill was up for passage in the 79th Congress, it seems to me were very clear.

Yes, Mr. Langs.

Mr. Langs: If I might just for the purpose of the record, so that you will understand what our position is in the beginning, pursuant to the adoption of Public Law 15, Michigan adopted in 1947, thereafter amended in 1949, and adopted Public Act Number 228 of the Public Acts of 1949, which law was adopted pursuant to and as part of the McCarran Act, Public Law 15, and I would like to read into the record just a few short sections to indicate the full and complete tieup between the Michigan Insurance Code as [fol. 23] it was adopted pursuant to Public Act—Public Law 15.

Trial Examiner Hier: That's the model code, so-called?

Mr. Langs: This is a model code, so-called, subject to certain slight variations in this particular state, and I read from our Michigan State Statutes Annotated, Volume 17, the supplement thereof, Section 24.567 (71). That is the official Statute Book for the State of Michigan and it reads as follows: Section 1, the purpose of this chapter is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress, as amended) by defining or by providing for the determination of (under standards or procedures herein prescribed) all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

Then Section 2 sets forth the definition of person or insurer and of the Commissioner. The Comisisoner shall mean the Commissioner of Insurance of this state.

Section 3 of the Act reads as follows: No person shall engage in this state in any trade practice which is defined in this chapter as, or determined pursuant to this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

Section 4 of the Act reads as follows: The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance. A. Making, issuing, circulating or causing to be made, [fol. 24] issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends, or share of the surplus to be received thereon or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies or making any misleading representation or any misrepresentation as to the financial condition of an insurer or as to the legal reserve system upon which any life insurer operates or using any name or title of any policy or class of policies misrepresenting the true nature thereof or making any misrepresentation to any policy holder insured in any company for the purpose of inducing or tending to induce such policy holder to lapse, forfeit or surrender his insurance.

B. Making, publishing, disseminating, circulating or placing before the public or causing directly or indirectly to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster or over any radio station or in any other way an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business which is untrue, deceptive or misleading.

C. Making, publishing, disseminating, or circulating, directly or indirectly or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral, or written statements or any pamphlets, circulars, [fol. 25] articles or literature which is false or maliciously critical of or derogatory to the financial condition of an

insurer and which is calculated to injure any person engaged in the business of insurance.

D. Entering into any agreement to commit or by any concerted action committing any action of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of the business of insurance.

E. Filing with any supervisory or other public official or making, publishing, disseminating, circulating or delivering to any person or placing before the public or causing directly or indirectly to be made, published, disseminated, circulated, delivered to any person or placed before the public, any false statement of financial condition of any insurer with intent to deceive.

F. Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs or any public official to whom such insurer is required by law to report or who has authority by law to examine into its condition or into any of its affairs or with like intent wilfully omitting to make a true entry of any material fact pertaining to the busines of such insurer in any book, report or statement of such insurer.

G. Issuing or delivering or permitting agents, officers, or employees to issue or deliver agency company stock or other capital stock or benefits, certificates or shares in any common law corporation or securities of any special or ad-
[fol. 26] visory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

H. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon or in any other of the terms and conditions of such contract.

I. Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium membership policy fees or rates charged for any policy or contract of accident or health insurance applicable to individual or family expense coverage or in the benefits payable thereunder or

in any of the terms or conditions of such contract or in any other manner whatsoever.

J. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance or agreement as to such contract, other than as plainly expressed in the contract issued thereon or paying or allowing or giving or offering to pay, allow or give, directly or indirectly as inducement to such insurance or annuity, any rebate of premiums payable on the contract or any special favor or advantage in the dividends or other benefits thereon or any valuable consideration or inducement whatever not specified in the contract or giving or selling or purchasing or offering to give sell or purchase as inducement to such insurance or annuity or in connection therewith any stock, bonds, or other securities of any insurance [fol. 27] company or other corporation, association or partnership or any dividends or profits accrued thereon or anything of value whatever not specified in the contract.

Now, that is it. I wanted to get this in the record because it forms a basis for our position on jurisdiction. Then Section 6 of the Act provides this. The enumeration in this chapter of powers vested in the Commissioner, or of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restricted or intended to limit the powers of the Commissioner or any court of review, but the provisions of this chapter are in all respects cumulative of and supplemental to the insurance code and all other applicable Michigan Statutes or common law.

And Section 7 makes this proviso. Upon probable cause, the Commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competiton or in any unfair or deceptive act or practice prohibited by Section 3 of this chapter.

Then the next Section, Section 8, provides what the Commissioner can do with reference to correcting the act complained of if he finds it upon investigation.

Section 9, A, provides that the Commissioner can issue

a cease and desist order. And Section 10 provides for method of review.

Section 11 covers undefined unfair methods of competition, and provides for violation of—Section 13, rather, provides for the violation of cease and desist orders and [fol. 28] the penalties which the Commissioner can impose.

Now, this particular Act was adopted pursuant to Public Law 15, which is found in the U.S. Code, Annotated, Sections 1011 to 1015, and I might also call attention to some recent cases, the case of American Universal Insurance Company vs. Sterling, 203 Federal Second 159; and the case of the North Little Rock Transportation Company vs. Casualty Reciprocal Exchange, 181 Federal Second 174, certiorari denied, 71 Supreme Court 56, 340 U.S. 823, 95, L.Ed. 604. In these cases, it was held that the right in the state, if the state has acted to control the insurance companies, that have their home office within their boundaries, that they have that right. Congress intended that they should have that right and that it is their right and their right alone. That forms the basis of our principal objections to the question of jurisdiction.

Trial Examiner Hier: Let me see if I have this accurately stated in my own language, if you agree with me. First of all, you claim because of the very complete, detailed act, which you have just read into the record, the Federal Trade Commission, in fact, the Federal Government and any of its agencies, has no jurisdiction whatsoever over the insurance business in Michigan, because Michigan has preempted the field and that would hold true in any other state with a similar act. That's the first point, isn't it?

Mr. Langs: No, I will go beyond that.

Trial Examiner Hier: I know you have a second point. The second point is, since your home office is in Michigan and your affairs are subject to regulation by the Insurance [fol. 29] Commissioner of Michigan in all details that it doesn't make any difference what you do in Mississippi, the Insurance Commisisoner here has exclusive jurisdiction over what you do in other states and the Federal Government has none. Isn't that the gist of what you are claiming?

Mr. Langs: That is correct. The insurance department of this state will not permit a company that is subject to its control to engage in lawful practices in Michigan and en-

gage in fraud and dishonest acts elsewhere. They are still the acts of this company in Michigan. Its home office is here and the Insurance Commissioner is of that opinion, that he has jurisdiction to control the acts of the insurance company wherever they may be because it's not within the purview of the law that you can be half honest and half dishonest and the company, as long as it is within his control, must abide by the rules and regulations which they believe to be honest and honorable in the activities of insurance and the cases which I have just cited; certainly the background of the McCarran Act, clearly indicates, in my opinion, that that was intended.

Trial Examiner Hier: Well, these gentlemen over here haven't said so, but I apprehend one of their points and one of their questions is, do you think a state like the State of Mississippi, where there is no regulation of any sort, you disseminate something in Mississippi. Some of the Mississippi residents think it's false and deceptive. Now, the Insurance Commissioner of Michigan does not think so. Who is going to resolve the difficulty? I suspect that's what is back of their position over here. At any rate, Mr. Langs, [fol. 30] I will not attempt to rule on jurisdiction until they have had a chance to show that they have got it; namely, when they rest. At the time they rest, you make any motions you wish on that point and as far as I am concerned, at my level, I will dispose of the jurisdictional question then.

Mr. Langs: All right. I would like to bring into the record two other points, for the purpose of preserving them for future basis of argument and motions on jurisdiction. In analyzing the Federal Trade Commission Act and particularly Section 12 of the Act, I believe it is Section 12,——

Trial Examiner Hier: That's the dissemination act, isn't it?

Mr. Langs: Yes, that's the Section under which this case is tried. This Section provides that it shall be unlawful to disseminate or cause to be disseminated any false advertisement and then it proceeds to define in what way those—the items which should be covered, and it refers specifically to food, drugs, devices or cosmetics and Section 14,—15, rather, defines the term of false advertisement and it again gives food, drugs, devices and cosmetics and I raise the

point that under this particular section of the Federal Trade Commission law, that the question of insurance is not within the definition of—therein found. I would also like to raise the question that in the event that there is to be a question here of dissemination through the mail, which is one of the allegations in the complaint, that the matter would be one for the postal authorities, rather than the Federal Trade Commission. Then a further comment. At the time that the material was requested in this case, last [fol. 31] year, sometime, by the Federal Trade Commission, when they wrote to the National Casualty Company and asked them for material, policies and advertisements and circulars and things which they were disseminating in the form of advertising, it was indicated to them at that time that they wanted this material for the purpose of engaging in a discussion with the company and that they would engage in a discussion with the company. The next thing they heard was the issuance of a complaint and we object to that, not on legal grounds, but certainly on ethical grounds, that they should not have acted in that manner.

I think that represents the basis of our position on jurisdiction and we will urge that at this time and also at the conclusion of the case.

Trial Examiner Hier: So far as the last point goes, Mr. Langs, I take it you understand that I have absolutely no authority over the administrative processes of the Commission. Once the complaint is I ought, it's assigned in rotation to a hearing examiner. I get my share of them and that's the end of them. I can't control anybody on the administrative side except when they appear as counsel in a case. That's the only control I have. If they have abused their discretion, it is a matter which has to be taken up with the Chairman of the Commission. I couldn't——

Mr. Langs: Well, I simply feel that it is something that ought to be put in the record to indicate that where the matter was sent and was intended for one purpose, expected to receive certain treatment and then received another, we just object to that and we'd like to note that in the record.

[fol. 32] Trial Examiner Hier: All right, sir.

Trial Examiner Hier: On the record. Counsel for respondent has produced, as previously indicated, each of the blank forms of contracts issued by the respondent which

are enumerated in the second paragraph, Paragraph Two of the Complaint, together with the advertising pertinent to each and at the request of counsel in support of the Complaint, they have been numbered as follows:

Commission's Exhibit 1, Form No. 950-3G, on which there is no advertising.

Commission's Exhibit No. 2-A, Form No. 970-3G; 2-B, 2-C, and 2-D are the advertising pertinent thereto.

Commission's Exhibit 3-A, Form No. 8005; 3-B, C, D, is the advertising pertinent thereto.

Commission's Exhibit No. 4-A, blank form 8011-3G; 4-B and C, the advertising pertinent thereto.

Commission's Exhibit 5-A is the blank form 8008; 5-B is the application form therefor.

Commission's Exhibit 6-A is blank form 8010-3G, and 6-B through 6-N is the advertising thereof.

Commission's Exhibit 7 is blank form 429-3G, on which there was no advertising issued.

Commission's Exhibit 8-A is blank form 999-3G and 8-B, C, and D, is the advertising thereon.

Commission's Exhibit 9-A is blank form 968-3G. 9-B, C, D, is the advertising pertinent thereon.

[fol. 33] Commission's Exhibit 10 is blank form N-430, on which there is no advertising.

Commission's Exhibit 11-A is blank form 8020; 11-B through F is the advertising pertinent thereto.

Commission's Exhibit 12-A is blank form 8019; 12-B through F is the advertising pertinent thereto.

Commission's Exhibit 13-A is blank form 8000-3G; 13-B, C, and D is the advertising pertinent thereto.

Commission's Exhibit 14 is blank form 955, on which there is no advertising.

Commission's Exhibit 15-A is blank form 8013 and 15-B through L is the advertising pertinent thereto.

Commission's Exhibit 16-A is blank form 8006; 16-B through G is the advertising pertinent thereto.

Commission's Exhibit 17-A is blank form 8007; 17-B through G is the advertising pertinent thereto.

Commission's Exhibit 18-A is blank form 8014 and 18-B through M is the advertising thereof.

Commission's Exhibit 19-A is blank form 8021; 19-B through D is the advertising that belongs to that form.

Commission's Exhibit 20 is blank form 8018. There is no advertising to that form.

Commission's Exhibit 21-A is blank form 8023, and 21-B is the advertisement which was issued on that form.

There have also been produced here, pursuant to the [fol. 34] subpoena, a tabulation of the amount of premiums paid in the policies in force, on each one of these contract forms for the years 1953 and 1954. And there is a sheet for each, except one, of each of the policies for the two years. They have been numbered as follows:

Commission's Exhibit 22 are the premiums and policies issued in 1953 on form number 950.

Commission's Exhibit 23 is the same thing on form number 970. I should say contract number 970.

Commission's Exhibit 24 is an I. B. M. code number for states in order that Commission's Exhibits 25 through 42 may be more easily understood.

Commission's Exhibit 25 is a list of the premiums paid in the policies in force during 1953 on policy number 8005.

Commission's Exhibit 26 is the same thing for policy 8011.

Commission's Exhibit 27 is the same thing for policy number 8008.

Commission's Exhibit 28 is the same thing for policy 8010.

Commission's Exhibit 29 is the same thing for policy 429.

Commission's Exhibit is the same thing for policy number 999.

Commission's Exhibit 31 is the same thing for policy 968.

Commission's Exhibit 32 is the same thing for policy 8020.

Commission's Exhibit 33 is the same thing for policy 8019.

Commission's Exhibit 34 is the same thing for policy number 8000.

[fol. 35] Commission's Exhibit 35 is the same thing for policy number 955.

Commission's Exhibit 36 is the same thing for policy 8013.

Commission's Exhibit 37 is the same thing for policy 8006.

Commission's Exhibit 38 is the same thing for policy number 8007.

Commission's Exhibit 39 is the same thing for policy number 8014.

Commission's Exhibit 40 is the same thing for policy number 8021.

Commission's Exhibit 41 is the same thing for policy number 8018.

Commission's Exhibit 42 is the same thing for policy 8023.

Now, these numbers Commission's Exhibits 22 through 42, inclusive, are all for the year 1953.

There has been marked for identification as Commission's Exhibit 43, a listing of premiums paid and policies in force during 1954, on policy number 950; as Commission's Exhibit 44, on policy number 970; as Commission's Exhibit 45,—45-A and B, on policy number 8005; as Commission's Exhibit 46 is policy number 8011; as Commission's Exhibit 47-A and B, is policy number 8010.

Commission's Exhibit 48 is policy number 429. Commission's Exhibit 49 is policy 999. Commission's Exhibit 50 is policy form 968. Commission's Exhibit 51 is policy form 8020. Commission's Exhibit 52 is policy 8019. Com-[fol. 36] mission's Exhibit 53 is policy 8000. Commission's Exhibit 54 is policy 955. Commission's Exhibit 55 is policy 8013. Commission's Exhibit 56-A and B is policy 8006. Commission's 57-A and B is policy form 8007. Commission's Exhibit 58 is policy 8014. Commission's Exhibit 59 is policy form 8021 and Commission's Exhibit 60 is policy 8023.

I understand from the face of these exhibits, Commission's Exhibits 22 through 60 purport to show the premiums and policies in force in each state in which the company had it in those years on those particular policies.

(The papers referred to were marked Commission's Exhibits 1 through 60 for identification.)

Trial Examiner Hier: Now, there is one list of premiums paid and policies in force in 1953 and 1954 which is missing and that is on policy number what?

Mr. Brookfield: Number 10.

Trial Examiner Hier: You mean Exhibit No. 10?

Mr. Brookfield: Exhibit No. 10, policy number N-430.

Trial Examiner Hier: Now, I understand from counsel for the respondent that that is because there were no policies of that number in force and effect during those two years, so far as you know.

Mr. Langs: Yes, so far as we know, there was none sold and no premiums received.

Trial Examiner Hier: All right, sir. I presume you offer these in evidence?

Mr. Brookfield: Mr. Examiner, I offer the exhibits from [fol. 37] 1 to 60 in evidence, for the purpose for which it has been shown as being the exhibits which you have read off. I think Mr. Counsel for the respondent will so stipulate and admit they may be received in evidence.

Mr. Langs: I will stipulate that they are true and correct records from the company. However, from the standpoint of the question of jurisdiction and the right of this Commission to hear, I would object upon that basis, that they are not properly admitted.

Trial Examiner Hier: Except for the jurisdictional point though, you have no other objection?

Mr. Langs: I have no other objection.

Trial Examiner Hier: That objection, of course, is overruled until we get to the end of this government case and these Exhibits 1 through 60 are admitted into evidence.

P. G. Korn, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Trial Examiner Hier: Let me have your name, sir.

The Witness: P. G. Korn, K-o-r-n.

Trial Examiner Hier: Go ahead.

Direct examination.

By Mr. Brookfield:

Q. You are Mr. Korn?

A. That's right.

Q. You have given your name and address on the record?

[fol. 38] P. G. Korn.

A. P. G. Korn.

Q. By whom are you employed, Mr. Korn?

A. National Casualty Company.

Q. What is your position with the National Casualty Company?

A. Executive Vice President.

Q. What are your duties as executive vice president?

A. Primarily administrative.

Q. The National Casualty Company is a corporation?

A. That's right.

Q. Under the laws of the State of?

A. Michigan.

Q. Michigan. How old is the company?

A. About fifty years. I don't know the exact date of incorporation, it was 1903 or '04.

Q. It is a stock company?

A. Right.

Q. What business is the National Casualty Company authorized to conduct?

A. The business of insurance.

Q. Does this include health and accident insurance?

A. Yes, sir.

Q. Does it include any other type of insurance?

A. All casualty—miscellaneous casualty lines.

Q. Are the activities of the health and accident depart-
[fol. 39] ment separate from the other departments?

A. Just to the degree of operation, yes.

Q. In how many states—or, rather, where is the company licensed to do business?

A. In all the states and the District of Columbia and Territory of Hawaii.

Trial Examiner Hier: Licensed by whom? Those states?

The Witness: By those respective states.

Q. (By Mr. Brookfield) The home office is in Detroit, Michigan?

A. Detroit.

Q. You are the vice president in charge of the accident and health?

A. That's right.

Q. So that all of the accident and health policies in which we are interested and activities are under your general direction?

A. Right.

Q. Mr. Korn, do you know how many employees the National Casualty has?

A. I can give you an approximate figure, around a hundred eighty-five and a hundred ninety.

Q. That is local employees?

A. Right.

Q. How many agencies do you have?

A. Well, it's usually two categories, direct reporting agency, approximately three hundred and fifty to four [fol. 40] hundred. And then sub-agents may number into —I am not certain of that figure, possibly Mr. Matthews may be able to give it to you.

Q. Mr. Matthews also has charge of the agency department?

A. That's right.

Q. Do these same agencies sell both your casualty and your health and accident?

A. No, the majority of them don't. There may be one or two recently that do, but not as a general rule, no.

Q. So that when you are referring to these agencies, you are referring to the accident and health agency, rather than a casualty agency?

A. Right.

Q. These agencies, I suppose, are located in every state where you are licensed to do business?

A. Right.

Q. Mr. Korn, do you know what, in rough figures, what the total volume of business in accident and health policies for 1953 was? That is, the total volume done by your company.

A. Are you asking for this individual business or the company, as a whole?

Q. The company roughly as a whole.

A. Approximately sixteen million.

Trial Examiner Hier: For accident and health only?

The witness: That's right.

Q. (By Mr. Brookfield) And in 1954?

A. It might be somewhat higher than that, the figures are available.

[fol. 41] Q. Would the report which I asked about show that?

A. The annual statement, yes, sir.

Q. Will you furnish us with such a report without a subpoena for it?

A. I believe so, if attorney advises to.

Q. Mr. Korn, are all the company's policies issued by the home office?

A. Not all.

Q. How do you distinguish whether or not they would be issued by the home office?

A. There are a few states that have the authority to issue policies. I don't know exactly what the percentage is, but it is a relatively small percentage.

Q. That the agents in those few states, the agents themselves can issue policies?

A. Not in a particular state, but by agency.

Q. Well, what proportion would you say of all the company's policies are issued at the home office?

A. I would say possibly eighty percent.

Q. Eighty.

A. I believe so. That's a relative figure.

Q. Does the home office mail the premium notices or how are they mailed to the policy holders?

A. Not in all instances. They may in a few cases.

Q. How are the premium notices generally handled?

A. By the agent.

[fol. 42] Q. Do the agents in all cases keep track of their particular premium holders, irrespective of whether they move out of their area or not?

A. I don't understand that question.

Q. Where a policy holder moves out, that the agent has sold a policy to, moves out of that area, say, into another state, would the agent still continue to bill him?

A. He may still collect it and he may permit that policy holder to pay his premium through another agent in an immediate locality. That shifts back and forth.

Q. Is all of the premiums turned into the company or the large portion of it turned into the company by the agent?

A. Right.

Q. Rather than by the policy holders?

A. Right.

Q. How high would you say that proportion would be?

A. Oh, I would say at the present time possibly ninety, ninety-five percent of the premiums.

Trial Examiner Hier: How long does the agent who wrote the policy continue to get a part of the premium paid in?

The Witness: As long as he services the work. No definite time. As long as he services that business.

Trial Examiner Hier: As long as he handles the account?

The Witness: That's right.

[fol. 43] Trial Examiner Hier: He still gets pa[illegible] of the premium?

The Witness: That's right.

Cross-examination.

By Mr. Langs:

Q. Mr. Korn, how long have you been in the insurance business?

A. Thirty years.

Q. And during that time what type of insurance have you been principally engaged in?

A. Accident and health insurance.

Q. And how many years has the National Casualty Company been in business?

A. Fifty years, I believe, fifty-one years.

Mr. Langs: I will reserve any further questioning until later.

[fol. 44] L. P. Matthews was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Trial Examiner Hier: What is your name?

The Witness: L. P. Matthews.

Direct examination.

By Mr. Brookfield:

Q. Your name is L. P. Matthews?

A. That's correct.

Q. You are assistant secretary of the National Casualty Company?

A. And director of agencies.

Q. And director of agencies. What are your duties as director of agencies, Mr. Matthews?

A. Well, as director of agencies, the agency department is in charge of production of our individual accident, health

and individual and hospital family policies and I supervise production, supervise the servicing of the agents that we have, appoint new agents, either through correspondence or personal contact, supervise and engage in field work and, of course, engage in handling the routine problems of the agents that we have. We also handle to a great degree the advertising of the individual accident and health and individual family and hospital policies.

Trial Examiner Hier: You have nothing to do with casualty?

The Witness: Nothing.

Q. (By Mr. Brookfield) When you say "individual", you [fol. 45] are referring referring now to as an individual as distinguished from group accident?

A. An individual.

Q. But include family group?

A. That's right.

Q. How are these agencies set up, Mr. Matthews? Are they set up as independent agencies or, I mean, are they paid employees of the company or contract or how are these various agencies set up?

A. They are all independent contractors, not under salary to the company.

Q. How are they hired? How is contact made with them?

A. Well, that could occur in various ways. They might answer an advertisement that we inserted in a trade publication. They might have been referred to us by one of our own agents with whom they were friendly; in some cases, they contact the insurance department of their state and we are recommended as one of the companies that they could be privileged to represent. At other times, we might have some possible agent referred to us and we might write to him. And those are about the main ways that we are contacted.

Q. Would they apply to the salesmen? Do you distinguish between the agents and the salesmen?

A. Well, of course, our agents sell, but we don't refer to them as salesmen. They are agents who must be properly licensed by the insurance department of the state in which they engage in their business and certain agents are under contract as independent contractors.

Q. And they, in turn, have salesmen who sell the policies?

[fol. 46] A. Those agents who are under direct contract have the privilege, subject to company consent, of appointing what is called a sub-agent who operates through that direct agent.

Q. Who is it that makes the contact, the contact with the member of the public to whom a policy is to be sold and who negotiates the sale of the policies? Is it the sub-agent or sub under them, salesmen, or who? That is what I am trying to find out.

A. It could be either the direct agent on a contract with us or a sub-agent whom he has licensed to represent the company.

Q. Does the company conduct any training school for these agents or give them any training?

A. Our policy has been that we do not appoint or put any agent under contract unless he is experienced in the accident and health business.

Trial Examiner Hier: As a matter of fact, most of these agents handle other lines of insurance too, don't they?

The Witness: Some of them are what you might call general insurance agents handling casualty, fire, life, and they have a general knowledge of insurance.

Q. (By Mr. Brookfield) Do they represent other companies besides yours?

A. Mostly, yes.

Q. You are confining all your answers now to accident and health and eliminating casualty?

A. Definitely, I am eliminating casualty from everything.

[fol. 47] Q. Absolutely. How many agencies, do you have under your direction?

A. I would say about three hundred and fifty to four hundred.

Q. And they, in turn, have other sub-agents?

A. That is correct.

Q. The sub-agents are not responsible to you; they are responsible to the agencies, is that correct?

A. Not entirely. As agents of the company, they are also responsible to the company, but they transact their business through the agents who appointed them.

Q. How are these agents compensated?

A. Strictly through commission.

Q. Mr. Matthews, for the purpose of the record, could you take a typical sale of a policy through the various steps in which it is handled from the time the contact is made with the respondent all the way through the time it is processed in the home office?

A. You mean the procedure that is followed?

Q. Yes, the procedure.

A. Well, I would say that the procedure followed in most cases, the agent procures the signed application and forwards it to the home office direct if he's a direct reporting agent under contract and doesn't have the policy issuing privilege. In those cases, we receive the application, the home office, and the home office issues the policy and returns it to the agent for delivery to the insured. Now, in the case of what we have termed sub-agents, when they take an [fol. 48] application, they turn it in to their direct agent through whom they are reporting, who, in turn, follows the procedure I have mentioned.

Q. The policy is mailed to the—the application, rather, is mailed to the home office and the home office fills in the blanks in one of the policies, whichever policy the application calls for, or is that done by the agent?

A. What do you mean, filling in the blanks?

Q. Well, the name of the insured and the——

A. That's all completed in the presence of the applicant by the agent or the applicant completes it himself.

Q. Both on the application and the policy itself?

A. No, the policy is completed and typed in the home office or by an agent, if he has the policy issuing privilege.

Q. And then the policy is mailed from the home office in Detroit to the agent who has sold it for delivery to the applicant?

A. To the policy holder at that time.

Q. And that is the way that the great majority of your cases are handled throughout the United States?

A. I would say so, other than where an agent has a policy issuing privilege; then he issues the policy himself.

Q. Approximately how many of your agents would have such a policy issuing privilege?

A. Well, I would hesitate to approximate that. It is not a large percentage, however.

Trial Examiner Hier: Mostly in the large cities?

[fol. 49] The Witness: Mostly in the large cities or in states so distant from the home office that it would take time and delay in the delivery of the policy.

Q. (By Mr. Brookfield) Well, now, does—do these agents when the issue these policies, do they make a report to the home office on the policy or they have a form to show what they have sold?

A. We are dealing somewhat, if I may say so, with underwriting procedure which is somewhat outside the realm of my department. However, I can naturally say that the policy issuing agent sends the original application from which the policy has been issued to the home office and such papers, such as investigation and so forth as should go with it, for our home office files.

Q. And they are kept in the home office files during the pendency or life of the policy?

A. And reviewed by our underwriting department.

Trial Examiner Hier: Reviewed with the privilege of veto?

The Witness: That would depend upon the policy provisions and the—whether the premium has been paid with the application.

Trial Examiner Hier: No, I mean does the home office have the privilege of turning down any policy that was issued by your policy issuing agent in Los Angeles, say?

The Witness: Yes.

Trial Examiner Hier: It does have that privilege?

The Witness: Yes.

[fol. 50] Q. (By Mr. Brookfield) Now, Mr. Matthews, does the home office, that is the Detroit office, furnish the agents with leads?

A. Do we furnish the agents with leads?

Q. Does the home office?

A. No, sir, we do not.

Q. You don't do any direct mail advertising that results in leads being furnished?

A. When you said, do we furnish leads, I took that to mean the general practice of some companies who handle their own direct mail and get the leads in the home office

and then distribute them to various agents' territories. We don't engage in that procedure.

Q. How is your advertising for the purpose of obtaining leads handled?

A. The vast majority of our direct mail is sent when requested and under certain conditions to the agent and the agent gets it out.

Trial Examiner Hier: You said the vast majority. Do you do any direct mail advertising?

The Witness: Not as a company. We have on occasion on behalf of some agents who have asked us to utilize direct mail facilities of Detroit because they didn't have such local facilities available.

Trial Examiner Hier: Now, in that direct mail advertising, that goes out at the request of that particular agent. What address is on that? The home office address or the local agent?

The Witness: That would depend on the manner in which the agent had requested it to be so addressed, either back to us or to him.

[fol. 51] Q. (By Mr. Brookfield) Well, if he has requested that those leads, that the replies, rather, be sent back to you, then those replies are segregated and mailed to him, are they?

A. That's right.

Trial Examiner Hier: It seems to me, Mr. Brookfield, that it's important to get the percentage or amount or some indication how substantial this practice is. Could you tell us, Mr. Matthews?

The Witness: You mean as between our mail?

Trial Examiner Hier: This direct mailing, the substantiality of this direct mailing that you do.

The Witness: Well, in the over-all picture, I would say we do not do very much.

Trial Examiner Hier: Ten percent? Fifteen percent?

The Witness: Of the general over-all direct mailing?

Trial Examiner Hier: No, of solicitation by mail when the agent is mailing it out, or the home office is mailing it out. Direct, consumer, prospective insurance mailings. Do you do ten percent of it from Detroit and the agents do the rest in their local addresses or fifteen percent or what?

The Witness: Well, I would say that it was less than five percent.

Trial Examiner Hier: Less than five, O.K.

Q. (By Mr. Brookfield) Mr. Matthews, in that connection, five percent of all the mail that—the advertising is done by the company and its agents, is that what you mean, is handled by the home office?

A. Well, as I answered Mr. Hier's question, my understanding was that of all the direct mail that was disseminated on company material, how much went out of Detroit [fol. 52] and how much did the agent get out and I would say that we handled for the agent less than five percent of such dissemination.

Q. Now, to what extent does the company send to the agent for their distribution literature prepared under the —at the company headquarters at your direction? What would be the volume of that?

A. You mean the quantity?

Q. Yes.

A. Well, I would have to consult the records on that. I think we have them available.

Q. Do you have the records available?

Trial Examiner Hier: He says he thinks so.

Mr. Brookfield: Sir?

Trial Examiner Hier: He says he thinks so.

The Witness: Thank you, Mr. Langs. Now, would you like me to give you these by form?

Q. (By Mr. Brookfield) Yes.

A. We have a direct mailing card form 2186. Between the period March 11, '53, to December 31, '53, we distributed to agents not less than five percent of the home office grand total of 84,100 pieces which went into nine states only. The largest distribution being in Michigan, 35,000.

Q. In that connection, does your record show how many of these went into the District of Columbia? Do you have it listed?

A. Two thousand.

[fol. 53] Q. Will you continue now with the next form?

A. The same form, 2186 from January 1, 1954, to January 19, '55, 42,300. None into D. C.

Q. Beg pardon?

A. None went into the District of Columbia.

Q. Did they go into the states listed on this compilation you prepared?

A. Well, that would be matter of matching them up.

Q. Will you read the list of states then?

A. This is January 1. Do you want me to go back to March 11, '53?

Q. Yes, both, please.

A. March 11, '53, to December 31, '53, District of Columbia, Florida, Indiana, Michigan, New York, Ohio, Oklahoma, Pennsylvania, Wisconsin. January 1, '54, to January 19, '55, Alabama, Kansas, Kentucky, Michigan, Minnesota, New Hampshire, New York and Pennsylvania. Some of those may be duplications.

Q. Now, the next form.

A. 2125A, March 11, '53, to December 31, '53, 46,000, into the states, District of Columbia, Florida, Georgia, Illinois, Michigan, New Jersey, New York, North Carolina, Ohio, Tennessee, Wisconsin. From January 1, '54, to October 8, '54, 38,250, Alabama, Iowa, Nebraska, New Hampshire, Ohio; 2191—

Q. That's your next form?

A. That's right.

Q. Go ahead.

[fol. 54] A. From March 11, '53, to December 31, '53, 91,100 to the states of Michigan, New Jersey, New York, Ohio, Pennsylvania, Tennessee. January 1, '54, to November 29, '54, 55,250, Alabama, Florida, Kansas, Michigan, New Hampshire, New York, Ohio, Tennessee; LPM/G letter, March 11, '53, to December 31, '53, 108,500, Colorado, Michigan, New Jersey, Ohio, Pennsylvania, Virginia, Wisconsin. January 1, '54, to November 8, '54, 40,050, Alabama, Indiana, Kentucky, Michigan, Nebraska, New Hampshire, Ohio, Pennsylvania, Virginia, Wisconsin. LPM/D letter, March 11, '53, to December 31, '53, 32,700, Florida, Illinois, Kentucky, Michigan, North Carolina, Ohio, Pennsylvania, Wisconsin. January 1, '54, to March 4, '55, 29,000, Alabama, Indiana, Iowa, Kentucky, Massachusetts, Michigan, New Hampshire, New York, Ohio, Pennsylvania, Tennessee; LPM/H, March 11, 1953, to December 31, '53, 64,950, California, Colorado, Florida, Georgia, Idaho, Indiana,

Kentucky, Michigan, New York, North Carolina, Ohio, Pennsylvania, Tennessee, West Virginia, Wisconsin. January 1, '54, to March 11, '55, 89,100, Alabama, Arkansas, Florida, Georgia, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, Ohio, Tennessee, Wisconsin; 2196, March 11, '53, to December 31, '53, 20,000. Indiana, Iowa, Michigan, Ohio, Pennsylvania, Wisconsin. January 1, '54, to March 11, '55, 5,000, Arkansas, Florida, Wisconsin. 2221, February 27, '54, to January 31, '55, 61,600, Florida, Georgia, Iowa, Kansas, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Oregon, Pennsylvania, Virginia, Wisconsin. HV letter, March 11, '53, to June 1, '53, 40,-[fol. 55] 000, Connecticut. JTK letter, March 11, '53, to October 19, '53, 10,000, Missouri and Kansas. MB #1, 7-1-53 to 12-28-53, 207,987, Pennsylvania, Delaware, New Jersey. August 2, '54, to March 11, '55, 136,000, Wisconsin. MB #2, December 29, '53 to—this must be a misstatement, or rather typographical error, it says from December 29, '53, to December 31, '53, which is only three days, 35,000.

Q. Is that MB #2?

A. Yes.

Mr. King: We have to 6-16-54.

The Witness: That would probably be it. This is a typographical error. January 1, '54 to June 16, '54, 152,820, Pennsylvania. MB #3, June 23, '54, to November 24, '54, 250,000, Pennsylvania, Delaware and New Jersey. MB #4, December 1, '54, to March 11, '55, 131,000, Pennsylvania, Delaware, New Jersey.

Trial Examiner Hier: Mr. Brookfield, are you going to put all these MB #2's and 4's and JTK's in this record?

Mr. Brookfield: Mr. Examiner. when Mr. Matthews reads this list, I might say, sir, that all the MB's and so forth are already in the record.

Trial Examiner Hier: Oh, they are in the record.

Mr. Brookfield: They are in the record already.

Trial Examiner Hier: Certainly not under that title.

Mr. Brookfield: This advertising letters—I mean the advertising is all listed.

Trial Examiner Hier: They are in these contracts?

[fol. 56] The Witness: Yes.

Trial Examiner Hier: In other words, it's printed on the face of it? I can find it that way. Very well.

Q. (By Mr. Brookfield) Is that your list?

A. That completes the printed direct mail.

Trial Examiner Hier: I have already interrupted once. I might as well ask you another question on my mind. You send these MB number 2's out, 35,000 lots to your agent in Wisconsin, for instance, does he buy a mailing list from the—a selected mailing list of certain income brackets, or what does he do with these?

The Witness: I would say that generally speaking they use the telephone directories, both general and yellow pages.

Trial Examiner Hier: And they mail that stuff out?

The Witness: That's right.

Trial Examiner Hier: And they wait for the results?

The Witness: Yes.

Trial Examiner Hier: Does the company ever furnish the agents with mailing lists?

The Witness: No.

Trial Examiner Hier: Go ahead.

Mr. Brookfield: Mr. Examiner, I ask that this list which shows the various advertising which is on the record now —and also this list refers to the numbers of the various pieces of advertising and the policies which they advertise, and we have compared them with Mr. Matthew's—that this list be given an exhibit number.

[fol. 57] Trial Examiner Hier: Very well. That will be Commission's Exhibit 61-A, B, C and D.

(The paper referred to was marked Commission's Exhibit 61-A, B, C and D for identification.)

Mr. Langs: May I have the same objection as previously?

Trial Examiner Hier: The record may show that you have a continuing objection, sir, to everything and anything that's been going on in this case since we started, on the jurisdictional ground that you have mentioned. I don't think myself it's necessary to reserve jurisdictional points, but if you wish to do so, it's perfectly all right with me.

Mr. Langs: Thank you.

Trial Examiner Hier: Off the record.

(Discussion off the record.)

Trial Examiner Hier: On the record.

Q. (By Mr. Brookfield) Mr. Matthews, will you examine Commission's Exhibit 61-A to D. Are you familiar with that exhibit?

A. I am.

Q. Was that exhibit prepared under your direction?

A. It was.

Q. Will you explain to his Honor what it is.

A. This is a list of advertising material which either by exact cited phraseology or what we though was of similar import, should be submitted today, together with the period during which it was disseminated and the territory into which it was disseminated.

[fol. 58] Q. That is the list of the advertising which you have submitted with the policies today?

A. Yes, sir.

Mr. Brookfield: I ask that it be received in evidence.

Trial Examiner Hier: Anything but the usual objection?

Mr. Langs: Nothing but the usual objection.

Trial Examiner Hier: That objection is overruled. The document 61-A to D is admitted in evidence.

(The paper referred to, heretofore marked for identification Commission's Exhibit 61-A through D, was received in evidence.)

Trial Examiner Hier: These agents of your personally solicit as well as by mail?

The Witness: Definitely.

Trial Examiner Hier: Any substantial degree?

The Witness: Definitely, sir.

Mr. Brookfield: Mr. Examiner, I would for the purpose of saving this witness from having to go through and identify each advertisement in the—which was introduced this morning, I would like to suggest that subject to Mr. Langs' joining in and your approval, that the various numbers called for in Commission's Exhibit 61-A and the letters referred to, shown as Commission's Exhibits—in other words, just make a statement as to what Commission's Exhibits they are.

Trial Examiner Hier: Go ahead.

Mr. Brookfield: The 2149 is the Commission's Exhibit [fol. 59] 3-B; 6625 is Commission's Exhibit 4-B; 2113, Com-

mission's Exhibit 9-D; 2183 is Commission's Exhibit 12-B; 2171 is Commission's Exhibit 6-G. LPM/G is Commission's Exhibit 6-F. 05101, Commission's Exhibit 6-E. 2191 is Commission's Exhibit 12-C. LPM/H is Commission's Exhibit 12-D. 2164 is Commission's Exhibit 6-K. 2125-A, Commission's Exhibit 8-B. 2159, Commission's Exhibit 8-C. 2196, Commission's Exhibit 19-B. 2192, Commission's Exhibit 19-C. 2136, Commission's Exhibit 13-B. 2153, Commission's Exhibit 15-B. JTK, that's a form letter, Commission's Exhibit 15-G. HR, Commission's Exhibit 15-H. LPM/D, Commission's Exhibit 15-E. And the news mat, Commission's Exhibit 15-I.

Trial Examiner Hier: On request of counsel, I have marked a number of forms here as follows: Commission's Exhibit 62 is what the witness designates as a handout form 8023. Commission's Exhibit 63 is a form letter known to the respondent as circular letter LS #2. Commission's Exhibit 64 is a direct mail letter designated as RW #1. Commission's Exhibit 65 is a form letter designated LS #1. Commission's Exhibit 66 is a form letter designated MB #4. Commission's Exhibit 67 is designated MB #3. Commission's Exhibit 68 is form number 2221. Commission's Exhibit 69 is designated as HR. And Commission's Exhibit 70 is a newspaper mat.

(The papers referred to were marked Commission's Exhibits 62 through 70 for identification.)

Trial Examiner Hier: Exhibits 62 through 69 tie into Exhibit 61-A, B, C and D.

[fol. 60] I assume you offer those?

Mr. Brookfield: I offer them in evidence.

Trial Examiner Hier: He's already identified them.

Mr. Brookfield: I ask they be received in evidence.

Trial Examiner Hier. Mr. Langs?

Mr. Langs: Usual objection.

Trial Examiner Hier: All right. The objection is overruled. The documents 62 through 70 are admitted in evidence.

(The papers referred to, heretofore marked for identification Commission's Exhibits 62 through 70, were received in evidence.)

Q. (By Mr. Brookfield) Mr. Matthews, referring to Commission's Exhibits 62 to 70, this is advertising material that has been used during the period of January 1, 1954 to March 11, 1955?

A. It's been used according to the date stipulated in the list.

Q. And the date of the use and the territory in which it has been used and disseminated is included in Commission's Exhibit 61-A, B, C and D, which is the list?

A. It is.

Trial Examiner Hier: Do you permit your agents to do any of their own advertising over your name?

The Witness: If a copy is submitted to the home office for approval.

Trial Examiner Hier: It has to be submitted?

The Witness: Yes.

[fol. 61] Trial Examiner Hier. They can't do it freely?

The Witness: They are not supposed to.

Q. (By Mr. Brookfield) Mr. Matthews, you have not under the terms of the subpoena submitted all the advertising material that you have used over this period of time, is that correct, but only that which you consider to be covered by the wording of the subpoena?

A. We submitted the material according to the subpoena that was served in that we furnished all material which contained the exact cited phraseology and that which we deemed to contain the same import which was as stated in the subpoena.

Q. So that, so far as the import is concerned, that was—your company officials desired to comply with the subpoena?

A. Most definitely.

Q. But you have used other advertising during this period that was not submitted, is that correct?

A. That's possible, but this is all of the main material. There might be a form letter here and there that was just general, but very little.

Mr. Brookfield: Mr. Examiner, I ask that the form letter LPM/f be marked for identification, together with the postcard which hasn't any——

Trial Examiner Hier: Commission's Exhibit 71-A is a return postcard; 71-B is what Mr. Brookfield designates as a form letter, LPM/f.

(The paper referred to was marked Commission's Exhibit 71-A and 71-B for identification.)

[fol. 62] Q. (By Mr. Brookfield) Mr. Matthews, will you look at Commission's Exhibit 71-A and B and I ask you, are you familiar with that piece of advertising?

A. Yes, sir.

Q. Was that advertising printed and disseminated by your company during the period of March 11, 1953, to March 11, 1955? Or during that period?

A. This letter obviously was in use after March 11 or it wouldn't have been submitted to the Federal Trade Commission, but the actual cut-off date, and this is an obsolete letter, I believe, would be last fall, but the exact date, I don't know.

Q. Fall of?

A. 1954.

Q. Do you know where that letter was disseminated?

A. No, but I could secure that information.

Q. Will you secure that information prior to the time that this hearing adjourns?

Trial Examiner Hier: He means before tomorrow afternoon.

Mr. Langs: Just a moment, I would like to see this.

Mr. Brookfield: Haven't you seen this?

Mr. Langs: No, I have not seen it.

Mr. Brookfield: I am sorry, sir.

Trial Examiner Hier: Off the record.

(Discussion off the record.)

[fol. 63] Trial Examiner Hier: On the record.

Mr. Langs: Well, unless there is some way in which counsel can tie this into the allegations in the complaint, I do not see the materiality of it at all and I think it is rightly omitted; certainly, to the extent of obtaining information on it. We can obtain that if it is material, but I certainly would object to it as it does not come within the statements or the allegations contained in the complaint.

Trial Examiner Hier: That means I better read it. What

contract do you claim this goes to or what group of representations?

The Witness: That pertains——

Trial Examiner Hier: Mr. Brookfield.

Mr. Brookfield: The general—so far as I can see, I can only refer to the contract by the witness's testimony, but as to the allegations, it certainly applies to the general allegations as to the benefits to be received under these various policies.

Trial Examiner Hier: Section 3, you mean?

Mr. Brookfield: Section 3.

Trial Examiner Hier: Paragraph 3.

Mr. Brookfield: Yes. Number 3 under paragraph 3.

Trial Examiner Hier: I know what you mean, yes. It starts out, "the most complete coverage."

Mr. Brookfield: Yes.

Trial Examiner Hier: Mr. Langs, this paragraph 3 is language which is quite typical of Federal Trade Commission pleading; namely, first, there is the general statements [fol. 64] that they have issued, numerous and sundry statements and so on and then it says, typical but not all inclusive are the following; and it's been many times held that doesn't bar the proponent's counsel from offering material which is outside of that which is exemplified but which is along the same line. Of course, he is going to have to show me before he gets through that this reasonably induced—of course, it could be done by inference—the purchase of some one of your policies, that you issued.

Mr. Langs: Well, my objection does not go to the point which your Honor has raised. My objection goes to this point, that wherein do they make any allegation; that in paragraph 3 they have set up certain things which they consider typical. Paragraph 4 and 5 set up the allegation and the charge.

Trial Examiner Hier: Yes.

Mr. Langs: And where in paragraph 4 or 5 is there any charge which would go to any of the statements which are contained in there, even by referring to it as typical? That's what my objection is.

Trial Examiner Hier: I see. I guess I better read 3 over. Well, I don't agree with you there, Mr. Langs. The second paragraph, unnumbered, well that isn't going to identify it

very well. It's designated as paragraph 5 and then you come down to sub-paragraph numbered 3 and then there is a sub-paragraph under that on page 4, in which they raise this general question that what is the matter with your advertising is that you advertise these benefits, but you don't say therein that there's a lot of things that are excluded; insanity, Workmen's Compensation, injuries existing prior, and so forth and so on. This thing, it seems to [fol. 65] me, comes in that same general category. It talks about benefits, but it doesn't say what the exclusions are. That's their argument. That's their complaint.

Mr. Langs: I understand what their complaint is, but I still feel it would be necessary for them to specifically set forth an allegation on this particular item. In other words, they have given to the company certain items which they consider typical of things they want to have covered. We have attempted to do that.

Trial Examiner Hier: Yes.

Mr. Langs: Now, they come in here and they bring in another particular item which was not set up as typical and which is not in any way, so far as we can see, a matter wherein an allegation or a charge would fit that particular situation and because of that, we feel that it should be—it is properly excluded, should be excluded, rather than to require the company to bring in items which are outside the scope of the thing which is charged, and I made my point on it.

Trial Examiner Hier: Yes, I think the charge is broad enough to include this, Mr. Langs, both in paragraph 2 and also in paragraph 5. I don't know what he's going to do with it or how he is going to connect it up. I have to give him the opportunity.

Exhibit 71-A and B, do you want to examine the witness further on it or do you want to offer it in evidence or what?

Mr. Brookfield: I will examine the witness further on it.

Q. (By Mr. Brookfield) Will you look at 71-A and B, Mr. [fol. 66] Matthews, and tell us what policies that application, that advertising, is applicable to, or is intended to further the sale of?

A. This would apply to individual and/or family hospital policies 8013 or 14.

Mr. Brookfield: Your Honor, I ask that the exhibits be received in evidence.

Trial Examiner Hier: All right. We already thrashed that out. The general objection of Mr. Langs is overruled, as well as the specific objection. Commission's Exhibits 71-A and B are admitted.

(The papers referred to, heretofore marked for identification Commission's Exhibit 71-A and 71-B, were received in evidence.)

Q. (By Mr. Brookfield) Mr. Matthews, Commission's Exhibit 71-A and B, is that distributed by the company in the same areas in which those two policies are sold? Or has it been?

A. Not all inclusive, no.

Trial Examiner Hier: You say "those policies." I am afraid that's going to create a misconception in this record. You mean those two types of policies, don't you?

Mr. Brookfield: Yes.

Trial Examiner Hier: You are talking about specific policies.

Mr. Brookfield: The two numbers named by the witness.

Trial Examiner Hier: Two specific numbers.

[fol. 67] Q. (By Mr. Brookfield) What was it?

A. 8013,

Q. And 8014.

Mr. Brookfield: Which specific types of policies are in evidence under Commission's Exhibit numbers.

Trial Examiner Hier: All right.

Q. (By Mr. Brookfield) Do you know what states this advertising has been disseminated in?

A. Not at this time, no.

Q. Will you determine that by tomorrow afternoon? Can you determine it by tomorrow afternoon?

A. I believe so.

Q. Mr. Matthews, how is the conservation program of your company handled? By conservation program I mean premium renewals and keeping the policies in effect. Is that handled by the company or locally by its agents?

A. The collection of premiums is principally in the hands of the agents.

Q. Does the company send out any notices to delinquents or anything like that?

A. Very small percentage.

Q. Beg your pardon?

A. A very small percentage, because the premium collections are in the hands of the agents as part of their duty, you might say, or contractual requirements.

[fol. 68] Q. That is because they receive compensation as long as the renewals start coming in, is that correct?

A. Well, they receive compensation for renewals for which service they collect the renewals and attend to that function.

Q. Under what circumstances would the company collect premiums direct?

A. There are only two circumstances that I can think of at this moment and that is that over the years on occasion a small agent might die or something and there is nobody to carry on the agency and gradually the—rather, not gradually, but due to the fact that there isn't any estate or anyone who can carry on the agency, they simply say, "Will you take care of it from the home office?", which is what you might call a miscellaneous account and the other would be in the case of an agent who might be an individual operating without an office and he would ask us if we would take care of that function for him.

Mr. Brookfield: Mr. Examiner, I ask that premium notice forms, one blue one and one red one, be marked for identification as Commission's Exhibits 72 and 73.

Trial Examiner Hier: No, one number on both of them.

Mr. Brookfield: I think two numbers.

Trial Examiner Heir: All right. Commission's Exhibit 72 is a blue form, blue premium notice, and Commission's Exhibit 73 is a red delinquent premium notice.

(The papers referred to were marked Commission's Exhibits 72 and 73 for identification.)

[fol. 69] Mr. Brookfield: Mr. Langs, do you want to see this?

Mr. Langs: Yes.

Q. (By Mr. Brookfield) Will you examine Commission's Exhibits 72 and 73 for identification. I ask you, are you familiar with those?

A. Yes.

Q. Will you tell his Honor what they are.

A. Form 5190 is a premium notice which is sent out by the agent principally to the policy holder, informing him that his renewal premium is due. Policy form—I mean delinquent premium notice form 5191 is a follow-up which is sent out principally by the agent when the premium has not been paid.

Q. Are those prepared by the home office of the National Casualty Company?

A. You mean are they printed?

Q. Yes.

A. The form is printed by the home office.

Q. And distributed to the agents?

A. Sent to the agents in bulk. The agent types up the notice and sends it out himself.

Mr. Brookfield: I ask they be received in evidence.

Mr. Langs: No objection except the usual objection on it.

Trial Examiner Hier: Objection is overruled. They are received.

(The papers referred to, heretofore marked for identification Commission's Exhibits 72 and 73, were received in [fol. 70] evidence.)

Q. (By Mr. Brookfield) Now, Mr. Matthews, is a charge made for this printed material that is submitted to the agents? For instance, these notices?

A. There is no charge levied upon the agent for these two notices.

Q. I will ask you the same thing, is any charge made for any of the advertising material which you furnish to the agents?

A. That would depend upon certain individual circumstances.

Q. Such as?

A. On occasion there might be a share the cost. On another occasion we might furnish a fairly liberal quantity at home office expense which the agent, however, would send out.

Q. In other words, you would furnish the advertising material and the agency would pay for the cost of distributing it?

A. Yes, but not in all cases. Sometimes we would ask for a share the cost on the material also and then the agent would also assume the entire expense of mailing it out.

Trial Examiner Hier: Let me get this clear. Do you sometimes share the expense in the distribution of that material?

The Witness: On occasion.

Trial Examiner Hier: On occasion.

Q. (By Mr. Brookfield) Do you print any other conservation material besides the premiums renewals?

A. There have been some form letters which have been approved by the home office which agents have gotten up and sent out as follow-ups.

[fol. 71] Q. Do you print those for the agents?

A. Not as a general rule, no. If we did, they would be a multigraph form in fairly small quantities.

Mr. Brookfield: Mr. Examiner, I ask that this form letter of the Sparks Insurance Agency be marked for identification.

Trial Examiner Hier: All right, it is marked Commission's Exhibit 74.

(The paper referred to was marked Commission's Exhibit 74 for identification.)

Q. (By Mr. Brookfield) Mr. Matthews, I show you Commission's Exhibit 74 for identification and I ask you, can you identify that?

A. Identify it in what respect?

Q. That one of the form letters that you referred to a few minutes ago as being typical of those printed for the agents?

A. This could possibly be one. In wouldn't say it was necessarily typical because Mr. Sparks in this case, Sparks Insurance Agency might have had some thoughts of their own which were perfectly satisfactory.

Q. Did you submit this form to the Commission in request of their—last May, when they requested additional material?

A. Well, that I wouldn't know, sir, without going over the material that was submitted originally.

Q. But you have prepared similar mimeographed letters for your agents, is that correct?

A. I would say so, letters of this kind.

Mr. Brookfield: I ask it be received in evidence.

[fol. 72] Mr. Langs: Same objection.

Trial Examiner Hier: Objection overruled. Commission's Exhibit 74 is received in evidence.

(The paper referred to, heretofore marked for identification Commission's Exhibit 74, was received in evidence.)

Q. (By Mr. Brookfield) Would that be handled also on a share the cost basis, that type of material, conservation material?

A. No, I wouldn't say in this particular case, I am not entirely familiar with that form, but I would say that had been multigraphed probably at the home office.

Q. Multigraphed at your office and then sent to—where is that located?

A. Washington, D. C.

Q. Washington, D. C.

Mr. Langs: Might I ask, Mr. Brookfield, did I understand you to say that this form—you used the word multigraphed?

Mr. Brookfield: Isn't that the word? I think the gentleman used the word.

The Witness: Multigraphed.

Mr. Langs: Is this a multigraphed letter?

The Witness: That would be, yes. Whether it was done at the home office or by Mr. Sparks, I am not in a position to state.

Trial Examiner Hier: They are both referring to Exhibit 74.

[fol. 73] Q. (By Mr. Brookfield) Mr. Matthews, for purpose of illustration, referring now to Commission's Exhibit 6-A through 6-N, 6-A is one of your policies, is it not?

A. It is.

Q. And you take the exhibit and show how this advertisement would be—the advertising would be used by the com-

pany and its agents and how the policy would be sold, for illustrative purposes.

A. For sales purposes?

Q. Yes.

A. No, I can't do that.

Q. You have never done any selling?

A. Personally, some years ago.

Trial Examiner Hier: Mr. Brookfield, you said down to "N". I have it marked "L". Check that again. We might as well get the record straight.

Mr. Brookfield: I have got Commission's Exhibit 6-N as a rider.

Trial Examiner Hier: O. K., if it is marked that way. One thing that interests me, Mr. Matthews, do these agents put these circulars and cards and so on in mailings that go out with their other business? For instance, it's conceivable to me one of your agents, Sparks of Washington, whoever he is, runs a fire insurance agency too. Now, does he customarily or is it company policy or practice to put these solicitations for health and accident policies in premium notices of fire insurance or in the same envelope with solicitations of fire coverage or anything of that sort? What [fol. 74] is the practice?

The Witness: Quite a bit of the material is used along those lines. That's stuffers, as we call it.

Trial Examiner Hier: You have no objection?

The Witness: No.

Trial Examiner Hier: You don't care how he sends it out as long as he gets it out?

The Witness: As long as it's sent out properly.

Q. (By Mr. Brookfield) Mr. Matthews, has the company made any studies of the results of the direct mail advertising used by it and its agents so far as you know?

A. Not exhaustive, no.

Q. Well, to what extent have they?

A. Well, generally we go by the results of, shall I say, production. Without requiring any definite records as to percentage of returns, percentage of sales from returns and so forth.

Q. Well, by production, you mean after certain advertising has been used, you then make it for, say, six months

or something like that? Do you then make a survey generally of the agents to see whether or not it is successful?

A. No, sir.

Q. Do you know whether the agents do that either?

A. Well, by natural assumption, I would say that they wouldn't continue to use anything that they didn't think was to their—productive of some results.

[fol. 75] Q. Well, have the agents continued to order—reorder certain of the literature?

A. Certain agents have reordered certain types of literature, yes.

Q. This literature is not a one shot literature, generally is not a one shot production, especially that which accompanies the application?

A. It shouldn't be for the best results, but most of our agents are not what you call direct mail order agents or they don't participate to any large degree in direct mail.

Trial Examiner Hier: Who puts out this advertising? Does the National Casualty Company do it in its own office or advertising agency or what?

The Witness: Primarily in its own office.

Q. (Br. Mr. Brookfield) Mr. Matthews, before any advertising is distributed to these agents, is it submitted to the insurance commissioner in Michigan?

A. I don't believe it has been.

Q. Referring back to the agencies themselves, are these agencies assigned to geographical areas?

A. When you say assigned, do you mean in just what respect?

Q. Well, I mean, in other words, is the United States divided up into geographical areas?

A. No, sir.

Q. How are these agencies appointed then?

A. Well, say that an agent down in Elyria, Ohio, would like to have an agency and that territory isn't productive at the time he makes application and he meets our require-

[fol. 76] ments, well, he might just operate in Elyria, Ohio, and perhaps a small number of miles adjacent thereto, but there isn't any confining stipulation.

Q. Now, you have used that statement, "meets our requirements" a number of times. What do you mean by that? What requirements do you have for your agents?

A. Well, first of all, we require that they have the highest integrity. They are investigated thoroughly, every agent before he's appointed, he must know how to sell accident and health insurance. He must have a good background. I would say those are mostly the prime factors.

Trial Examiner Hier: What do you mean by a good background? Financial, moral, business or what?

The Witness: Practically everything you have mentioned.

Q. (By Mr. Brookfield) In other words, you don't hire anybody but successful salesmen?

A. That would all depend on what would be considered degree of success. Some people have shown ability to sell, but haven't realized their capabilities as yet.

Q. Do you have any educational requirements of your agents?

A. In what regard, college degrees?

Q. Yes, formal education or otherwise.

A. Well, I would say formal education. In other words, many an agent is successful who hasn't graduated from grammar school, where the college man who has isn't successful.

[fol. 77] Q. You are interested in securing producers, isn't that right?

A. We are interested in securing production, that's our business, interested in securing producers, yes.

Q. To what extent do you regulate these agencies?

A. Well, now, just what do you mean by regulate, Mr. Brookfield?

Q. Well——

A. Remember they are independent contractors.

Q. Well, don't they have a contract which provides for certain Government direction by the company, or are they let run wild?

A. According to their direct contract, there are stipulations in there as to certain things which they cannot do.

Q. What are those particularly?

A. Well, I would like to quote from one of our agency contracts which I don't believe we have available here, but one is they are not to involve the company in the payment of any obligations of any bills and things of that nature without company consent. That they conduct their business

in accordance with company regulations which means the rendering of reports on certain days and certain times. That they are to confine their representations to the printed text of the contract being sold. They are not to engage in dissemination of any particular advertising that might be of a harmful nature without permission of the home office and that gives you a pretty good idea. It also outlines their commission schedule.

Q. Well, can one agent sell in a town where another agent is already franchised?

[fol. 78] A. We don't have any franchises.

Q. You don't have any strict geographical areas?

A. No, sir.

Q. Mr. Matthews, has the company published any sample policies to be distributed by the agents to prospective customers?

A. We have printed many, many thousands of specimen policies.

Q. Minute policies?

A. No, sir, full size.

Q. And are they distributed to your agents?

A. Yes, sir.

Q. Do you know how many thousands? You stated "many, many".

A. No, sir.

Q. Sir?

A. No, sir.

Q. How long have you been publishing these sample policies?

A. Well, I have been with the company eighteen years and they had them when I came.

Q. Samples or specimens of sample policies made up in each as each new policy is developed?

A. Definitely.

Q. And distributed to the agents who are going to sell them?

A. Definitely.

Q. They have a portfolio of policies?

A. And then they order up additional quantities.

Q. Is that a usual and ordinary practice of the agents to order up?

[fol. 79] A. What was that, sir?

Q. Is that a usual and ordinary practice for them to reorder these?

A. Very general practice.

Q. Wherever the agents are located?

A. Because they use quite a few of these specimen policies.

Q. Mr. Matthews, did I ask you who fills in the blanks on the policies when the application has been signed by the prospect?

A. I believe you asked me before whether the policy was typed in the home office and the answers inserted there, is that right? Yo. are referring to the application?

Q. No, I am referring now to the policy itself. You stated before——

A. The policy is typed and issued at the home office unless an agent has a policy issuing privilege.

Q. Are you familiar with the terms of the various policies and premiums schedules or is Mr. Lapham or Mr. Zell or any of those?

A. I am rather familiar with them. Of course, Mr. Lapham of the underwriting department handles the actual checking of the rate and quotations.

Q. Now, referring to Commission's Exhibit 6-A, which is typical of the policies sold by the company, is it not?

A. Well, now, that would depend upon what you meant by typical.

Q. That is a typical accident-health policy, is it not?

A. As to the phraseology and so forth?

Q. Yes.

[fol. 80] A. I would say so.

Q. Now, when——

Mr. Langs: Will you speak up, Mr. Matthews.

The Witness: I am sorry.

Q. (By Mr. Brookfield) When the policy is sold to an applicant, how will those blank spaces be filled in? Do you know that?

A. Well——

Q. As to the amounts, what goes in.

A. You see, Mr. Brookfield, the applications are all taken by agents. There is no direct selling from this material. The application is sent in to the home office and from that

application, if the premium is correctly quoted, which it is, then that information is checked against our records to see it is correct and then inserted in the proper place in the policy. That's done by what is called by policy.

Q. The policy underwriting man does that under your direction?

A. Underwriting department.

Q. When do these policies go into effect? Do they have a specified date after the application is signed and after it's received by the company? Or what would be that?

A. Well, the policy takes effect upon the date of issue at the home office of the policy, if the premium is paid.

Q. Then the policy would take effect when the premium has been paid, the application has been processed and reviewed by the home office and the policy issued by the home office?

A. Yes, sir.

[fol. 81] Q. And then the policy is returned to the agent for distribution to give to the insured?

A. For delivery to the insured.

Q. And it has been in effect and force before it's delivered to the insured?

A. That's right.

Trial Examiner Hier: What's the effective date of the policy isued by the direct issuing agent, the date he issues or the date you validate it?

The Witness: Date he issues it.

Mr. Brookfield: I think that's all for you, Mr. Matthews, thank you, sir.

Trial Examiner Hier: Very well.

Cross-examination.

By Mr. Langs:

Q. I will try and cover a few things here in the next fifteen minutes. Mr. Matthews, you have indicated here in the discussion or in your statements with reference to certain items that have been made up as advertising material and there are many forms and there are many letters and circulars which you have referred to. Why are there many forms and circulars and letters? Why are they not all the same?

A. Well, there are two reasons I can think of at the moment. One is that the material itself is in a state of flux through continued striving for improvement, plus the fact that in the last few years the—from a practical standpoint, the returns from direct mail have fallen off so appreciably [fol. 82] that it's become a very expensive program for an agent to assume.

Q. Are there changes also as to what one agent might want as compared with what some other agent might want in a particular form?

A. Definitely.

Q. And is it a practice of the company where a particular form does not seem to be needed or have any further use that you delete it or mark it obsolete or discontinue it?

A. That is the general practice.

Q. And is that a continuing process which goes on all the time?

A. Yes, sir.

Q. Now, you have indicated here on two or three occasions this afternoon that the selling of the policies of National Casualty Company is not done by direct mail. And I believe you indicated, did you not, that approximately ninety-eight or ninety-nine percent of the policies are handled through agents before they come into the home office?

A. That is correct.

Q. Now, I believe also you have indicated that these applications are—applications for insurance are taken by the agent?

A. They are taken personally by the agent from the customer.

Q. And does it also follow that the agent is the one who is doing the selling in order to obtain the insurance policy or the, what you call, production?

A. Definitely.

Q. Now, the agent, I believe you also mentioned, is re- [fol. 83] sponsible for—whether you mentioned it or Mr. Korn—is responsible for following through on renewals. Is the renewal business an important part of the agent's function, an important part of his continuing compensation?

A. Well, we feel, the agency department, that the renewal portion of the business is just as important as the new business.

Q. Now——

A. As a matter of fact, if an agent isn't interested in building a renewal account, then we are not interested in him.

Q. Now, in order for him to render or develop a so-called continuing renewal business, I assume he would have to render service to his customers, the people he contacts, is that correct?

A. That is right.

Q. And that becomes a personal service between the agent and the insured?

A. Definitely.

Q. Are there occasions where general insurance brokers may have certain special business that they place either with the agents of the company or through the company at its home office? Do you ever have anything like that?

A. All business of what you might call general insurance brokers is placed through the agency of the company.

Q. Are there occasions where brokers do place such types of insurance?

A. That is correct.

Q. And in that instance, why your agent would not have [fol. 84] the contact with the insured but would pick up the information from the broker, is that correct?

A. From the broker.

Q. Well, is it a fair statement then to say that the advertising material which has been spoken of here is not used to sell, as such?

A. The material that——

Mr. Brookfield: Mr. Examiner, I don't think that question is proper. He is cross-examining his own official of the company.

Mr. Langs: I am cross-examining your witness.

Trial Examiner Hier: Well, you asked it on direct. You may answer the question to the best of your ability.

Mr. Langs: Would you repeat the question for the witness.

(The reporter read the question as follows:

"Question: Well, is it a fair statement then to say that the advertising material which has been spoken of here is not used to sell, as such?")

The Witness: That is correct. It is not used to sell, as such.

Trial Examiner Hier: What do you or counsel, either one of you, mean "sell, as such"?

The Witness: Well, may I answer that, counsel?

Mr. Langs: Yes, go right ahead.

The Witness: Well, take the material I was reading off as to quantity. That material is disseminated in such quan- [fol. 85] tities as I mentioned and the agent receives a card or a tearoff slip from the bottom and when he contacts the prospect, the sale is not made from the direct mailing material. It is made from the circular material or application material of the company and its policy.

Trial Examiner Hier: I can't see any other purpose than this material being printed and disseminated, if it isn't to stimulate interest in that policy to sell.

The Witness: The purpose is to stimulate interest for inquiry purposes.

Trial Examiner Hier: Is it accurate then for me to think that it is merely to obtain leads?

The Witness: It is to obtain what you might call contacts so that the agent can govern his time and not, well, I won't use the term "waste", but knock on doors, let's put it that way. He can govern his time periodically.

Trial Examiner Hier: Go ahead.

Q. (By Mr. Langs) Now, you mentioned that—something about the instance that the adverising material is not submitted to the Michigan Insurance Commissioner. It is a fact, isn't it, Mr. Matthews, that the Insurance Department of the State of Michigan makes periodic examinations of all of the activities and the affairs of the National Casualty Company?

A. That is correct, sir.

Q. Now, with reference to the application that Mr. Brookfield has spoken to you about and how it is prepared, what happens to that application or a copy of that application after it comes into the home office? Is it attached to the [fol. 86] policy or just what happens?

A. There is an actual photostatic copy made of the application, which is affixed to the policy.

Q. And is that then returned as a part of the policy to the insured?

A. It is a part of the policy.

Q. And is it attached when it is given back to him by the agent?

A. Yes, sir.

Q. As a matter of fact, the law requires that a copy of the application be attached to the insurance policy, isn't that correct?

A. That is correct.

Q. Now, with reference to these policies which you have indicated are—which are set forth in the exhibits, are used in different states. Some policies are used in one state; some are used in another state; some are used in several states. To the extent that those policies are used in any particular state, isn't it true that those policies are submitted and approved by the Insurance Commissioner of those states before that policy can be or is sold in those states?

Mr. Brookfield: Object to that as going beyond the direce examination testimony.

Mr. Langs: Well, I don't think so. He's gone into that situation.

Trial Examiner Hier: Well, you brought out these specimen policies had been disseminated over the United States. I never did see the materiality of that, but I assume it's there. You must have some purpose in it. I don't see the [fol. 87] materiality. He's not charging here anything deceptive about your policies as such. What he's charging here is the discrepancy between advertisement of the policy and I don't see the materiality of any of this. But since your questions went in, this one will go in. You may answer.

The Witness: All policies are submitted to the respective insurance departments of the states before they are sold in any state.

Q. (By Mr. Langs) Not only are they submitted, but they are approved before you sell them?

A. Approved or marked for filing by the insurance commissioner.

Q. Now, in connection with the material which you submitted on Exhibit 61-A, B, C and D, you have, Mr. Matthews, a list of items that you had indicated had been printed and distributed during certain dates. Now, do you

have those? I guess I have got the material here that you were working with.

Now, referring to item which is 2186, you commented that that had been distributed to January 19, 1955, and why did you use a date of January 19, 1955?

A. It was obsoleted as of that date. Not reprinted.

Q. And that refers to this form 2186?

A. That's right.

Q. Now, I refer you to the form 2125A and ask you whether or not you gave a date of October 8, 1954, as the final date?

A. Obsoleted as of that date.

Q. That's the reason why you used that final date?

A. That's right.

[fol. 88] Q. So that after that date, the form was no longer printed for dissemination?

A. That is correct.

Q. You also on form number 2191, you gave a date of November 29, 1954. And again why did you use that date?

A. The material was obsoleted as of that date.

Q. On form number LPM G you gave the date of November 8, 1954, and why did you use that as the final date?

A. The material was obsoleted as of that date.

Trial Examiner Hier: Mr. Matthews, when you say the material was obsoleted, in the home office, am I to understand that the agents, once that occurs, are forbidden to disseminate any more of it?

The Witness: The supply in the home office was entirely depleted and was not reprinted.

Trial Examiner Hier: There still might be some more disseminated?

The Witness: If an agent had some in his possession, he might.

Q. (By Mr. Langs) On form LPM D you give the date of March 4, 1955, and again why was that date used?

A. The material was obsoleted on that date.

Q. And on form LPM H, you give the date of March 11, 1955, and why did you use that date in your discussion?

A. Because the subpoena denoted a date of March 11, 1953, to March 11, 1955, but that has now been discontinued also.

[fol. 89] Q. That form has been discontinued?

A. Obsoleted.

Q. As to form number 2196, you again use the date of March 11, 1955, and why did you use that date as the final date?

A. That is the same as applicable as to LPM/H.

Q. And has that one been discontinued?

A. Definitely.

Q. As to form number 2221, you use a final date of January 31, 1955, and why did you use that date?

A. The material was obsoleted on that date also.

Q. And as to form HV, you used a last date of June 1, 1953. Why did you use that date?

A. Because the material was obsoleted and not reprinted.

Q. And on Form JTK, you used the final date of October 19, 1953, and why did you use that date?

A. That material was obsoleted as of that date.

Q. On form number MB #1, you used a date of March 11, 1955, and why did you use that as the final date on that one?

A. That is the date, the last date of the period called for by the Federal Trade Commission in its subpoena and that piece of material is currently being reviewed for reprinting.

Q. That has not been discontinued as of the present time?

A. No, sir.

Q. On form number MB #2, you have used a date of June 16, 1954, as the final date and why did you use that date?

[fol. 90] A. The material was obsoleted as of that date for improvement or change.

Q. And on form number MB #3, you used the final date of November 24, 1954, and why did you use that date?

A. That was the obsoleted date, November 24, 1954.

Q. And on MB #4, you used a date of March 11, 1955, and why did you use that as your final date?

A. That was the final date requested by the Federal Trade Commission.

Q. All right. Now, certain additional material beginning with Exhibit Number 69, I believe I am correct on that, am I right on that?

Trial Examiner Hier: 62, Mr. Langs.

Mr. Brookfield: 62.

Q. (By Mr. Langs) On Exhibit Number 62, you gave a final date of March 24, 1954. Why did you use that as the final date?

A. Could I see the exhibit.

Trial Examiner Hier: That's the green and white one.

The Witness: This is obsoleted as of March 24, 1954.

Q. (By Mr. Langs) All right. Now, the same thing on Exhibit Number 63, you used the date of March 11, 1955.

A. Sixty-three, well that was the last period date called for in the subpoena of the Federal Trade Commission. To the best of my knowledge, this is now obsolete. There were only 275 printed.

Q. All right. I refer you to Number 64, Exhibit 64, which has a final date of March 1, 1954, and ask you why you used that date.

[fol. 91] A. This was a letter printed simply for one agency and obsoleted as of March 1, 1954.

Q. I refer you to Exhibit Number 65 and you used the date of January 30, 1955. Why did you use that date?

A. This was obsoleted as of March 30, 1955.

Q. January 30?

A. January 30 from December 23. That was only used for a period of a little over a month.

Q. All right. I refer you to Exhibit 66 wherein you have used the date of March 11, 1955, and why did you use that date?

A. Well, March 11, 1955, was the last date required by the Federal Trade Commission as to the submission of material used during that period, from March 11, '53, to March 11, '55.

Q. Has that form been discontinued?

A. Not yet, sir.

Q. I refer you to Exhibit 67 and call your attention to the fact you used the date of November 24, 1954, and why did you use that particular date?

A. This one was obsoleted on November 24, 1954, and not reprinted.

Q. I shall refer you to Exhibit Number 68 wherein you have used the date of January 31, 1955, and why did you use that date?

A. This form was also obsoleted as of that date, January 31, 1955, and not reprinted.

Q. I refer you to Exhibit Number 69 wherein you have [fol. 92] used the date of March 11, 1955, and ask you why you used that date?

A. This was the final date of the period required by the Federal Trade Commission.

Q. And has that form been discontinued?

A. This form is still in use.

Q. I refer you to Exhibit Number 70 wherein you have used the date of January 31, 1955, and ask you why you used that date?

A. That was the last date required for the period required by the F. T. C. for its advertising material. This newspaper mat here is January 31.

Q. Why was January 31, 1955, used as the final date for dissemination?

A. Because this advertisement was discontinued as of this date. Incidentally, only used twice.

Q. Mr. Matthews, you indicated that you had been with the National Casualty Company about eighteen years.

A. That is correct, sir.

Q. How long have you been the director of agencies?

A. Approximately three years.

Q. What was your work before that time?

A. In the agency department of the company as assistant agency supervisor.

Q. How long had you had that function?

A. Some fifteen years.

Q. During the period of eighteen years you have either [fol. 93] been the assistant of that department or the director of that department?

A. That is correct.

Q. And you also indicated that part of your program was to supervise the agencies?

A. I——

Q. That is, try and get out production and also to take care of any of their needs or wants and any problems that might arise between the company and the agency, is that what you did?

A. That is correct, sir.

Q. Can you describe the, in any fuller detail than that, as to just what you might have done?

A. Well, of course, quite a bit of the work is routine inasmuch as various agencies have certain problems. They come to us for advice and counsel. They solicit ways and means of perhaps improving, increasing their volume, which we endeavor to generally give to them voluntarily; in our field work, we contact them personally and endeavor to stimulate them, discuss their problems with them and discuss ways and means of improving their caliber of business, you might say, or anything at all that they might bring up on the subject of their relationship with the company.

Q. In the event that some insured had a complaint or any problem which you felt was making him unhappy as to his relationships with the company or a particular agent, would that come into your department?

A. It would, sir.

Q. And what would you do with such a problem?

[fol. 94] A. Well, of course, any complaints that are made to an agent we hear about and very quickly.

Q. Yes.

A. And we endeavor at all times to as promptly as possible ascertain the true facts of the complaint and resolve it equitably to all parties concerned.

Q. Now, during this period of time when you have been the head of this department, have you ever received any complaints or claims from an insured that they had bought a policy upon the piece of advertised literature which they claim deceived them?

A. No, sir, I have not.

Mr. Brookfield: I object.

Trial Examiner Hier: Overruled.

Q. (By Mr. Langs) And during the time you were the assistant director of this department, I will ask you the same question. Did you ever receive any——

A. No, sir, I have not.

Mr. Langs: I believe that's all that I have.

Redirect examination.

By Mr. Brookfield:

Q. Mr. Matthews, I believe in answer to a question asked by Mr. Langs, you stated that the advertising material is not used to sell insurance, is that what you meant?

A. Are you speaking of the advertising material in its entirety or the direct mail material which is disseminated?

[fol. 95] Q. Well, the material which we have in the record here.

A. Some of it is in the form of circular applications which might be used in a presentation.

Q. And what is the purpose of the others then?

A. The others is simply to stimulate interest in the insurance and perhaps to, or rather to engender inquiries.

Q. In other words, it's for the purpose of having people contact your agency, is it not?

A. Generally speaking as regards the direct mail and direct cards.

Q. So in turn the agents can sell them insurance.

A. Personally.

Q. I believe in another question, I believe Mr. Langs asked you, did the Michigan Insurance Commissioner make periodic examinations of your company.

A. That is correct, sir.

Q. And you stated that it does. Well, at the time of this examination, does the insurance commissioner examine all the advertising matter which has been used?

A. Everything in the company's files are open for his inspection.

Q. Well, does he?

Trial Examiner Hier: That isn't the answer to the question though. It may be open for his inspection. Did he go through them?

The Witness: That is a question which I would not be [fol. 96] able to answer exactly because I am in and out of town quite frequently and during the course of some of these examinations, I might not have been present.

Q. (By Mr. Brookfield) Well, is it not a fact that this examination is specialized, you might say, on the financial

and policy issuing ends of the business, rather than the advertising?

A. I believe a great deal of it pertains to accounting end of it.

Q. Do you have correspondence in your files indicating approval of the advertising by the Michigan Commissioner?

A. No, sir.

Trial Examiner Hier: How does he work? Does he affirmatively approve advertising in this state or does he just disapprove of that which he doesn't like or what happens? Do you send the stuff up to his office before you issue it?

The Witness: No, sir.

Trial Examiner Hier: Well, I assume then if there is negative disapproval, unless you hear something from him, why you go ahead and use it.

The Witness: I would say that is about right.

Q. (By Mr. Brookfield) Mr. Matthews, when was the last examination of your company made?

A. I believe we are being examined right now.

Q. When was the previous one before then?

A. I believe four years ago. That's my recollection.

Q. Your advertising, of course, has changed more often [fol. 97] than once every four years.

A. Yes, sir.

Mr. Brookfield: Mr. Examiner, there are several questions of identification that I don't think were made clear, identification of some of this advertising that I don't think are clear in the record and while Mr. Matthews is on the stand, I would like to have those cleared up if there is no objection on the part of Mr. Langs.

Trial Examiner Hier: Go ahead.

Q. (By Mr. Brookfield) Mr. Matthews, referring to Commission's Exhibit Number 62, is that covered in the list which you gave me, rather, the list as Commission's Exhibit 61?

A. That's covered on the list for material utilized January 1, '54, and 31, '54.

Q. Do you know under what?

A. That's under DP—I believe that's a handout.

Q. Show me on Commission's Exhibit 61-D so I can mark it.

A. 1-19-54; discontinued 3-24-54. Used only in Ohio.

Q. That's Form DP #1?

A. That's right.

Q. Now, Commission's Exhibit 6-D, what form is 6-D as listed on Commission's Exhibit 61?

A. Income Security 8010. The 8010 is the policy form. It's the income security rather.

Q. And 6-E?

A. That's the HV letter.

[fol. 98] Mr. King: HV?

The Witness: HV.

Mr. King: Thank you.

Q. (By Mr. Brookfield) Now, 11-F, Mr. Matthews?

A. CDC.

Q. That's CDC on Exhibit 61?

A. 61-A.

Q. Now with reference to Commission's Exhibit 15-I, how is that designated on Commission's Exhibit 61?

A. That's 61-A?

Q. 61-A, yes, A, B, C, different page for each one.

A. Now, that is designated on 61-C as newspaper mat, hospital plan.

Q. Mr. Matthews, with reference to Commission's Exhibit 18-G, which is your form letter, LPM/D, do you know where that letter was distributed?

The Witness: Form LPM/D during the period 3-11-53 to 12-31-53, total of 3,700 pieces disseminated into Florida, Illinois, Kentucky, Michigan, North Carolina, Ohio, Pennsylvania, Wisconsin; from January 1, 1954, to March 4, '55, 29,000 into the states of Alabama, Indiana, Iowa, Kentucky, Massachusetts, Michigan, New Hampshire, New York, Ohio, Pennsylvania, Tennessee.

Q. (By Mr. Brookfield) Thank you. With reference to Commission's Exhibit 18-D that is a duplicate of the one you just identified, is it not?—a duplicate of 6-E? Just give us the number on that.

[fol. 99] A. This is the HV.

Q. HV letter.

A. That is correct.

Q. Same one we just had?

A. That's a circular.

Q. That was printed for the people in Connecticut?

A. Disseminated only in Connecticut.

Trial Examiner Hier: While we are on that point, Mr. Matthews, when you send these bulk mailings down to your agents, some of them are rather substantial, I believe you send them down by express, I assume, or am I warranted in assuming that the agents in distributing that material, whether by mail or throwaways or handouts or what have you, they cover quite a wide area. On the other hand, they cover quite a very narrow area.

The Witness: That is correct.

Trial Examiner Hier: Am I warranted in assuming that some of that material does cross state lines or not?

The Witness: No, sir, it would not.

Trial Examiner Hier: Well, I had in mind areas like for instance, Philadelphia and Camden, New Jersey, is right across the river. Cincinnati has Covington and Newport across the river. Kansas City, Missouri, and Kansas City, Kansas, and so on. Can you state positively either one way or the other that it does not?

The Witness: Yes, sir, I can because no agent disseminates material into any state in which he is not properly [fol. 100] licensed by that state.

Trial Examiner Hier: Well, now, tell me something about the insurance business. The St. Louis agent, nothing to prevent him being licensed to do business in East Saint Louis, Illinois.

The Witness: He could secure a nonresident license for the State of Illinois, but all policies would have to be countersigned by a resident of Illinois.

Trial Examiner Hier: Same way with Cincinnati and Covington; Philadelphia and Camden and so on?

The Witness: Exactly.

Trial Examiner Hier: Your office really doesn't know the order of circulation?

The Witness: Not exactly, sir, other than it does not go into any state where the agent is not licensed.

Trial Examiner Hier: Any more questions?

Mr. Langs: I have a couple.

Trial Examiner Hier: All right.

Mr. Brookfield: Just one more, sir.

Q. (By Mr. Brookfield) Mr. Matthews, does the home office receive requests from agencies to make up new advertising material or to supplement the advertising material which has been sent to those agencies?

A. On occasion we receive such requests.

Q. And does the home office then make up such advertising?

A. Not necessarily so. We receive quite a number of such requests. We couldn't afford to do so.

[fol. 101] Q. Well, suppose that you had a request from several agencies, suggesting that new advertising material be prepared to further the sale of some particular policy. You have had that, haven't you?

A. Yes, and we would request their specific ideas.

Q. Beg pardon?

A. We would request their specific idéas.

Q. Then would you prepare such advertising?

A. Not necessarily unless we deemed it justified.

Q. Have you in the past prepared such advertising in accordance with such requests?

A. I would say we possibly have.

Mr. Brookfield: I think that's all, Mr. Hier.

Recross-examination.

By Mr. Langs:

Q. Now, these questions about the insurance commissioner, which the Examiner was asking you about, Mr. Matthews, have you ever received any complaints from the insurance commissioner of the State of Michigan that someone had complained to the insurance commissioner who, in turn, had passed it on to you, that they had been deceived by any of this material which had been introduced here?

A. No, sir, we have not.

Q. Have you ever received any such complaints from any insurance commissioner of any state?

A. No, sir, we have not.

Q. Now, one other item and possibly I didn't catch this clearly, but I want to be sure that—I didn't check back the

[fol. 102] record, but at one point in the discussion or the questions and answers yesterday, Mr. Brookfield had asked you certain information or certain questions about advertising and how it was prepared and whether it was approved by the company before it was disseminated and whether or not the agent could go ahead and make up advertising on his own and disseminate it without submitting it to the company and you used the word in there of harmful and that the agent could not use any harmful material. Then you went on without any particular break at that point and indicated no harmful advertising without company approval. Now, of course, I thought I detected a little smile on Mr. Hier's face at the time and I wanted to be sure and correct that, if I heard correctly.

A. Obviously we wouldn't approve any material that was harmful.

Q. Nor do you permit your agents to ever use any such material to the best of your ability?

A. No, sir, we do not.

Q. I just wanted to clear up that one point.

Mr. Langs: That's all I have.

Trial Examiner Hier: Anything more?

Mr. Brookfield: Just one question. By that you mean Mr. Matthews, that the agents before they use any material are supposed to submit it to you?

The Witness: That is right.

Trial Examiner Hier: All right, Mr. Matthews, thank you.

[fol. 103] STATEMENTS OF COUNSEL

Mr. Langs: I would like the record to show that pursuant to the request of Mr. Brookfield, we are furnishing to him an annual statement which is printed for filing with the several state commissioners which was filed with the State of Michigan and others as indicated for the year 1953 and the year 1954 and also a statement of the dissemination of circular LPM/F as it was issued during the year '53, March 11, 1953, to December 31, 1953, and January 1, 1954 to October 8, 1954, when the form was discontinued and marked obsolete.

Mr. Brookfield: Mr. Examiner, I ask that the 1953 Annual Statement of the National Casualty Company be received in evidence as Commission's Exhibit Number——

Trial Examiner: 75.

Mr. Brookfield: And the 1954 Annual Statement of the National Casualty Company be received as Commission's Exhibit 76.

(The documents referred to were marked Commission's Exhibits 75 and 76 for identification.)

Trial Examiner Hier: Do you have any objection, Mr. Langs, except the continuing objection?

Mr. Langs: Not at all.

Trial Examiner Hier: That objection is overruled and the documents are received.

(The documents referred to, heretofore marked for identification Commission's Exhibit 75 and 76, were received in evidence.)

Mr. Brookfield: And the dissemination data just referred [fol. 104] to by Mr. Langs as referring to the Form LPM/F be received in evidence as Commission's Exhibit Number 77.

Trial Examiner Hier: All right. LPM/F—what's the date on it?

Mr. Brookfield: That's the form referred to in the Commission's Exhibit 61.

Trial Examiner Hier: All right.

Mr. Brookfield: And it shows the dates of dissemination and the figures.

Trial Examiner Hier: Same situation, Mr. Langs?

Mr. Langs: Yes.

Trial Examiner Hier: All right, same ruling. Commission's Exhibit 77 is marked and received in evidence.

(The paper referred to was marked Commission's Exhibit 77 for identification and received in evidence.)

Mr. Brookfield: Mr. Examiner, that concludes the taking of testimony at this hearing in Michigan, in Detroit, and I request, as I have done off the record, that the Commission's case be adjourned to a mutually agreeable period of —just a moment.

At this time I would like the Examiner to take judicial notice of the insurance statutes of the various states and I will have Mr. King read the various citations.

Trial Examiner Hier: Court citations?

Mr. Brookfield: Yes.

Trial Examiner Hier: I am sure that counsel and every-[fol. 105] body knows what they are. You just dictate them to the reporter.

(Whereupon, the following was copied into the record by the reporter:)

States with Unfair Trade Practices—Model Bill

1. Arizona—Insurance Code, Chapter 64, Art. 21, Sec. 1 to 21.
2. Arkansas—Arkansas Statutes 1947, Title 66, Sec. 1701-1713.
3. Colorado—Chapter 72, Art. 15, Secs. 1 through 13, Colorado Revised Statutes.
4. Florida—Florida Statutes Annotated, Vol. 18, Sec. 643.01 to .13.
5. Georgia—Code of Georgia Annotated, Book 17, Title 56, Secs. 401(a) to 413(a).
6. Hawaii—Chapter 161(c), Section 8553.01 to 8553.14, Session Laws of Hawaii, 1951.
7. Iowa—H.B. 332 enacted April 15, 1955.
8. Indiana—Burns Indiana State, Title 39, Sec. 39-5301-53018.
9. Kentucky—Article 28, Sec. 304.924 to 304.945 Rev. Stat.
10. Louisiana—Title 22, Sec. 1211-1217 as amended.
11. Maine—Chapter 56, Sec. 130-133.
12. Maryland—Article 48A, Sec. 258-272.
13. Massachusetts—Chapter 176D, Sec. 1 (1947), page 33.
14. Michigan—Chapter 547, Sec. A. 1.
15. Minnesota—Chapter 72, Sec. 72.21-72.23.
16. Nebraska—Chapter 44, Sec. 44:1501-1504. See also [fol. 106] Chapter 44, Sec. 750-752.
17. Nevada—Chapter 189, Sec. 49-491 (see also Chapter 189, Sec. 45).
18. New Hampshire—Chapter 333-A, Sec. 1-4.
19. New Jersey—Sections 17:29B-1 to 17:29B-14.
20. New York—Chapter 501, Article IX-D, Sec. 270-282 (1948).

21. New Mexico—Section 60-712 to 60-722.
22. North Carolina—Section 58-54.1 to 58-54.13.
23. Pennsylvania—Title 40, Sec. 1151 to 1162.
24. South Carolina—Article 12; Section 8110 to 8110-14.
25. South Dakota—Chapter 144 (H.B. 118) (1947 Session), p. 38.
26. Tennessee—Article XIX, Sections 6459.56 to 6459.64.
27. Virginia—Title 38, Section 38.1-49 to 38.1-57 (1947).
28. West Virginia—H.B. 67 enacted March 14, 1955.
29. Wisconsin—Chapter 207, Sections 207.01 to 207.14.
30. Wyoming—Reg. Sess. 1955, H.B. 170, Secs. 1-13.

States with Limited False Advertising Statutes

1. Alabama—Title 28, Sec. 26 (4601), 1941-pg. 39. Title 28, Sec. 28 (4603), 1941.
2. California—Chapter 1, Art. 6, 780, 781, 782, 783, 783.5 and 784. Chapter 5, Art. 3, Sec. 1731.
3. Delaware—Chapter 486, Sec. 25 (1949), Chapter 488, Sec. 27.
4. Idaho—Chapter 12, Sec. 41-1204, 41-1206.
5. Illinois—Article IX, Sec. 149 (1939), Art. XXIV, Sec. 401.

[fol. 107] 6. Kansas—Chap. 40, Sections 40-235 and 40-242 and Section 40-222.

7. North Dakota—Chapter 26-10, Sections 26-1011, 26-1013, 26-1015, 26-1012, also 26-09A01 to 26-09A07.
8. Ohio—Section 13171 to 13173; also 3905.43; 3923.16 and 3999.08.
9. Oklahoma—Title 36, Sections 821, 822 and 823. Title 36, Sec. 144.
10. Texas—Article 580b (1951) Art. 21.20 also Art. 1554.
11. Utah—Chapter 63, title 27, Sec. 43-27-1 to 43-27-22.
12. Vermont—Chapter 390, Sections 9222, 9223, 9185.
13. Washington—Article 30, Sec. .30.01 to .30.09.

States Without Any False Advertising Statutes

1. Connecticut—6031.
2. Mississippi—Section 5683 (1943), page 79 (pertains to applications for insurance).
3. Rhode Island—(P.L. 1948), Chap. 2134.

States With Statutes Regulating Advertising that Pertains to Life Insurance Companies Only.

1. District of Columbia—Title 35, Sec. 35-714, Title 35, Sec. 35-1340.
2. Missouri—Chapter 376, Sec. 376.590 and 376.600.
3. Montana—Section 40-1939 (1951), page 97, Section 40-1942, 40-1425.
4. Oregon—Section 101-513 (1951), page 68. Section 101-128 (1951) or Section 736.455 (1954).

[fol. 108] Mr. Langs: I would like to interpose my objection on jurisdiction which I think goes to the point which I mentioned yesterday and again this morning. It is not a question of what the other states may have. Our position is that we are covered by the Michigan Law and that the Michigan law provides the minimum standards that we can use in any state and that the only problem involved would be one where a state would require a standard higher. Michigan has one of the best insurance codes in the country and what another state might have would not be material in this case, because the Michigan law does provide for full and complete coverage of all activities of the insurance code with a very aggressive insurance department and these other states, as such, could only add more to it, but not less.

Trial Examiner Hier: Your position is that the only inquiry I may make to determine jurisdiction, has Michigan occupied the field?

Mr. Langs: That is correct.

Trial Examiner Hier: Their position is that I have got to look at all forty-eight states. I am going on the other theory until we get along here further and I can look up some law of my own.

Now, these states that Mr. King has dictated into the record fall into various groups. There are twenty-seven states, as I recall it, that have this so-called model code, which are, in substance, the same as the Michigan Code,

although probably less detailed and somewhat less specificity.

Are Government counsel seriously contending that juris-[fol. 109] diction exists in those twenty-seven states?

Mr. Brookfield: Mr. Examiner, Government counsel contends, sir, and until it's been overruled that we have jurisdiction over the activities of any company which—in all of the states in which it operates, all of the states in which it has license or all of the states in which it mails literature to the state.

Trial Examiner Hier: Well, I can't agree with you. This is not a case such as usually arises under the Federal Trade Commission Act where a company is engaged in interstate commerce, and does a nation-wide business, and you need not show any particular unfair, deceptive act in each state; you need only show two or three to show a pattern. This is the reverse of that. Here, it seems to me, you have to establish jurisdiction in every state because Congress itself has compartmentalized this picture. I am aware of all these cases that you fellows always throw at me, that you have to judge interstate commerce by the whole picture. You can't pick it apart because you won't be able to pick it apart. That's true, that's the law. Congress itself has split this thing up in forty-eight compartments. It seems to me you have got to show not only deceptive acts and practices in each of the forty-eight states, but certainly establish that that state has not preempted the regulatory field with regard to that subject matter and, for the life of me, I don't see how in the world you can do it with these twenty-even states, because the provisions there, while not quite specific as the Michigan Code, are certainly very specific.

There is no "to the extent" used in Public Law 15. It is [fol. 110] fully regulated, in my opinion. So far as I am concerned, twenty-seven states are out of this case unless you come up with something that I can't possibly anticipate at this point.

Now, at the other end of the picture, if I recall correctly, there are three states that have no regulation.

Mr. Brookfield: That's right.

Trial Examiner Hier: No state law at all. All right.

Mr. Brookfield: Then there are six states approximately that do not regulate anything except——

Trial Examiner Hier: Life.

Mr. Brookfield: Life insurance.

Trial Examiner Hier: I think that's fairly inferable from the face of the statutes themselves. Now, let me see, that leaves thirteen states which are more or less the real battleground here and on that respect, I want to ask you at this time quoting, for instance, from the California Code, and I find this language in other codes: "No insurance company doing business in this state, no officer," and so forth, "no agents, no broker shall make, issue, circulate or cause to be issued or circulated, any estimate, illustration, circular or statement of any sort, misrepresenting the terms of any policy issued by it with benefits or advantages promised thereby or the dividend and share of surplus to be received thereon."

Do you construe the word "terms" and the word "benefits" in a financial sense only because of the third clause or do you construe it to indicate the subject matter that's [fol. 111] involved in this proceeding? You see that third clause says, or the dividend or share of the surplus to be received thereon. There seems to be quite a division of opinion on that point.

Mr. Brookfield: My contention is that on that point that this was intended to cover the financial. In other words, direct financial.

Trial Examiner Hier: You mean misrepresent its financial condition, ability to pay claims. You claim it's limited to that?

Mr. Brookfield: To the greater extent, yes, sir.

Trial Examiner Hier: It seems to me "terms", "benefits", certainly are wider than any profit-sharing mentioned.

Mr. Brookfield: Well, I might say, sir——

Trial Examiner Hier: You dig me up some law on that point, if you can find any, because I am inclined to think this doesn't.

Mr. Brookfield: What I was getting ready to say, I wasn't prepared to argue that point here this morning. You took me unawares.

Trial Examiner Hier: I am bringing up these points now so you won't be caught unawares next time. I would like to have some law on that, if you can find it, because there are a good many statutes in that shape. Well, you are not sure that you are through?

Mr. Brookfield: To be frank, that is the exact story.

Trial Examiner Hier: Well, I told you before that I won't go into this question of enforcement. If there is a statute, I will take the statute and make up my mind as to [fol. 112] whether it preempts the field. If it does, jurisdiction is out as far as I am concerned. It is certainly out in twenty-seven states that have this model code.

(Whereupon, at 10:45 a.m., May 11, 1955, the hearing in the above-entitled matter was adjourned.)

[fol. 113] Wednesday, October 12, 1955.

Met, pursuant to adjournment, at 10:00 a.m.

PETER G. KORN, was thereupon called as a witness for the Respondent, and, having been previously duly sworn, testified as follows:

Direct examination.

By Mr. Langs:

Q. . . . Will you indicate—first of all, how many years have you been in the insurance business?

A. Thirty-one years.

Q. How many years of that period have you spent in accident and health and hospitalization insurance?

A. All of the time.

Q. What jobs or type of work have you performed during the course of those years?

A. Underwriting, claims, agency, agency involving sales, promotion, administrative.

Q. So that during the course of the thirty-one years that you have been in this business you have participated in the functions of all of the principal departments of an insurance company that handles A and H and Hospital insurance, is that correct?

A. That is correct.

[fol. 114] Q. Now, isn't it true also that during that period of time that there have been certain changes which have taken place in the handling of A and H and Hospital insurance?

A. That is correct.

Q. Particularly many years ago hospitalization insurance was almost an unknown thing?

A. Correct.

Q. And today hospitalization insurance is quite a well-known thing, is that correct?

A. Correct.

Q. Your span of service in the insurance business has taken you through some of these changes which have occurred in this type of business?

A. That is correct.

Q. In other words, you were in it before the hospitalization insurance became a factor, a principal factor, and you are in it today where hospitalization insurance has become a very important factor?

A. Right.

Q. Now Mr. Korn, I want to take certain specific allegations which the Federal Trade Commission has set forth in its complaint which they have picked up out of the context and made certain inferences and innuendoes about for the purpose of clarifying the records so far as the respondent's position is concerned, and in the complaint I think the first item that they set forth is the statement, "No increase in premium because of age—No decrease in benefits because of age."

Now, number one, are there any policies which are issued [fol. 115] by A and H companies, companies handling the type of insurance which this company handles, that provides for increasing the premiums each year or decreasing the benefits each year?

A. There are policies that provide for increase in premiums. Possibly not each year, but at a given age; and some that reduce the benefits on a given age.

Q. Now, from an historical point, Mr. Korn, covering your experience in this type of business, what years ago was the type of policy, the principal type of policy, that was written in the A and H business? Did it provide for an increase in premiums at a given age? A decrease in benefits at a given age? As disfinguished from a permanent premium basis? Was there a difference between those two types of policies several years ago?

Mr. Brookfield: Mr. Examiner, I think this is getting away beyond the complaint.

Trial Examiner Hier: I don't know whether it is or not. Go ahead and find out. We can't tell at this stage.

Q. (By Mr. Langs) Go ahead.

A. Accident and Health insurance is primarily considered as accidental death and disability insurance, loss of time insurance. Years ago the companies used to write policies. It was quite prevalent that at a given age the premium would increase, say, at age fifty or fi-ty-five, or some companies had a provision that at that given age the benefits would be reduced a certain percentage.

As the industry progressed, the demand greater, com- [fol. 116] panies developed what might be termed a level premium, the premium at the time of the acceptance of the risk would be continued as long as the risk was insured with the company.

Then there was a development of hospitalization insurance, which came in later, and in the hospitalization field the same increase in rates or decrease in benefits prevailed.

So, to meet the demand of the public, provide for broad coverage, to be able to give the risk a premium that would be level throughout the existence of his policy, the company followed that practice. I would term it a liberalization policy or practice.

Q. Now, when or as this evolution took place which you have described, this statement which has appeared in certain advertising and which specifically and apparently was picked up verbatim out of exhibit Commission's 6(j)—I show you Exhibit Commission's 6(j)—as this evolution took place was this statement used for the purpose of distinguishing between the two types of insurance?

A. Yes, sir.

Q. Had it been used for a period of how many years, would you say?

A. I would say that this statement might have been used for the past fifteen years or more.

Q. And tell the Examiner, as an expert—one who has been involved in this type of business all of your life—why this statement was used.

A. As I previously related, accident and health insurance possibly followed the trend of life insurance historically

[fol. 117] where, in many of the life associations, benevolent associations, there was an increased premium as the man became an additional year of age, and accident and health followed the same practice, except they would have the attained age at fifty, fifty-five or sixty, where the rate would go up.

To differentiate, to distinguish between that type of policy and one that might be termed a level-premium policy, the companies used the phraseology, "No increase in premium because of age", or the reverse if there were evidences of some policies of other companies that the benefits would be reduced they would say the statement, "No benefits reduced because of age or decreased because of age."

It was the distinguishing factor between other policies.

Q. In other words, this was simply a means of indicating to the public that this policy or the policy issued by this company was different from that of other companies which provided for increase in premium or decrease in benefits?

A. Correct.

Q. And that is all that it was intended to convey, is that right?

Trial Examiner Hier: Or stated otherwise, it was designed to overcome what you felt might be a pre-existing impression resulting from advertising in the past on a certain type of policy?

The Witness: Yes, if such was stated in literature.

Trial Examiner Hier: When you speak of companies you include your own?

The Witness: Yes, we have it in our advertising.

[fol. 118] Q. (By Mr. Langs) Now, in your experience, Mr. Korn, have you had knowledge of any insured coming into the company or to you as an officer of the company, the respondent in this case, during the course of these many years, several years, and holding up to you an exhibit similar to Exhibit 6(j), Commission's Exhibit 6(j), or any other bit of literature that may have made that same statement, and said, "Mr. Korn, you advertise here that this policy provided for no increase in premiums or no decrease in benefits because of age, and I was misled"? Did any insured or anyone ever come to you and tell you they had been misled by that advertisement?

A. No, sir.

Q. Now, another item which the—the Commission has indicated that this statement has caused some improper inference, "For employed men and women ages sixteen to sixty-nine years inclusive". Now, Mr. Korn, going back into the historical evolution of A and H policies, Accident and Health policies, will you indicate for the examiner and this record what changes have taken place with reference to the age limits of people who would be eligible to participate in this type of insurance.

A. Going back prior to the era of hospitalization insurance, the company sold accident and health insurance, disability insurance, loss of income insurance. The purpose of such insurance was to provide the protection for an insurable income. It was presumed that children, minors sixteen years of age or under, did not have an insurable income, and therefore would not qualify for a disability policy. The age limit of fifty, fifty-five or sixty was also assumed as the top income earning age level possibly also [fol. 119] as to a physical risk hazard beyond that age, so the companies wrote business from ages sixteen to fifty-five, fifty-nine, sixty. It was purely in the area within what age brackets were people eligible for such insurance. That was the intention.

As the industry progressed and liberalized, that age bracket of acceptable risks was broadened, and now they go up to sixty-nine, seventy, eighty—particularly with respect to hospitalization insurance—and they also go down too, to as low as date of birth, in some instances fourteen days or a month, whichever may be chosen by the company as the acceptance age bracket.

Q. So that during the evolution of this type of insurance there apparently have been—there have been ideas as to—there have been different ideas as to when or what type or age bracket insurance companies would consider the risk eligible. That has changed or varied over the many years that you have been in this business?

A. Correct.

Q. And is it true that there are companies today that have different age brackets that establish the eligibility of insureds for that particular type of insurance?

A. Yes, sir.

Mr. Brookfield: Mr. Examiner, I don't see what other companies do has anything to do with this case.

Trial Examiner Hier: Nothing, except the background, is all.

Mr. Brookfield: I have purposely——

[fol. 120] Trial Examiner Hier: He is defending partially on evolution. If I get the picture correctly, some of these statements have been made to overcome any public idea the public may have retained advertising back years ago when life expectancy wasn't quite as long, when there was no level premiums, constant premiums, and so on. That's the only purpose he is bringing in other companies for. He is talking about the industry as a whole. Let's go off the record a moment, Mr. McGuire.

(Discussion off the record.)

Trial Examiner Hier: All right, let's go on, Mr. McGuire; the objection is overruled.

Mr. Korn, have you issued policies to people sixty-nine years of age?

The Witness: Yes.

Trial Examiner Hier: And you have issued them at sixteen?

The Witness: Yes.

Trial Examiner Hier: Let's take the next one. Have you issued A and H policies to anyone one day old?

The Witness: That I cannot say specifically.

Trial Examiner Hier: Then I will ask you the question, will you do it?

The Witness: Yes.

Trial Examiner Hier: All right, go ahead.

Q. (By Mr. Langs) Now, following through, Mr. Korn, you have indicated an evolution here of policies having a different age limitation as to eligibility over the course of [fol. 121] years. Now, am I to assume correctly that this statement which has been challenged by the Federal Trade Commission was for the purpose, so far as this Respondent is concerned, of indicating what this respondent will do with reference to eligibility of age limitations? In other words, this is a description of this respondent's eligibility limitations on this particular policy?

A. Correct, sir, on any particular policy for which that statement applies.

Q. Now, although there may be other companies that have age limits, so far as this particular statement is concerned that have a lesser number of years or a greater number of years, nevertheless this is the statement that applies to this respondnt and its policy?

A. Correct.

Q. And it is the advertising which I will show you, Commission's Exhibit 13(b) from which—in part—that statement was lifted by the Federal Trade Commission verbatim, and that is to indicate the coverage that you will extend to age limitations on insureds for the type of policy which is advertised in that literature, is that correct?

A. I would say that it is the acceptance age limits.

Q. So that that distinguishes that policy from what some other company's policy might be? If they have different age limits that is up to them?

A. That's correct, sir.

Q. This is simply an expression for age limits for acceptance so far as you are concerned?

[fol. 122] A. Correct, sir.

Q. Exhibit 13(b), Commission's 13(b), applies to A and H or hospital and medical insurance?

A. Hospital, medical insurance.

Q. Now, during the course of your experience—first of all—strike that. For how many years has the respondent used this statement, "For employed men and women ages sixteen to sixty-nine years inclusive."?

A. I cannot answer that question. It would be the number of years we have had this policy on the market, and I don't know how long.

Q. Is it a matter of several years?

A. Yes, I would say "several" might be the proper term.

Q. In your experience during the course of thirty-one years have you ever seen a similar statement to this applied to where the ages might be changed but the statement itself, the context of the statement, might be the same? Have you ever seen that statment before?

A. Yes, sir. Many times.

Q. And over what period of time, in your experience in the industry, have you seen a similar statement?

A. I would say in the last thirty-one years.

Q. The only change that has occurred during that time would be a variation of the age brackets?

A. Correct, sir.

Q. During the course of your experience have you ever had someone come to you personally as an insurance man or as an officer or agent of the company, and say, "Mr. Korn, you advertise this policy for employed men and [fol. 123] women, ages sixteen to sixty-nine years inclusive, and you mis-represented the policy to me, because of that statement, which you set forth in the advertising." Has anyone ever come to you and told you that?

A. No, sir.

Q. Do you know, as administrative head of the Respondent, whether or not any complaints have come up to you through the different departments of the company concerning any claim by an insured that they were misled by this statement?

A. No, sir. I know of none.

Q. Now, as the administrative head of this company, do you know of any claims with reference to the first one that I mentioned about no increase in premiums—no decrease in benefits because of age? Has any claim come up to you——

A. No, sir.

Q. —through channels in your organization, that they were misled by that statement?

A. No, sir.

Q. Now, the next item which the commission has set up is one that is similar and of similar purport to the last one which we discussed. "For individuals or family groups, ages one day to sixty-nine years."

Now, the language is approximately the same, but slightly different, and would the same answers which you have given to the previous one with reference to the evolution of the age limitations for acceptance of the risk apply to this statement which I have just read?

[fol. 124] A. Yes, sir.

Q. And approximately how long have you been aware or known of this particular type of statement—and I show

you Commission's Exhibit 11(c)—from where, apparently, the Commission picked the language noted. How long have you known that type of a statement without regard to the age limitation which you indicated has varied over the years? How long have you known of that type of statement to be in existence?

A. Since the beginning of hospitalization insurance, possibly sixteen or eighteen years.

Q. During the time that you have known about that statement—strike that. Has that satement, modified as the age limitations have changed, been used in advertising during the course of that period?

A. Yes, sir.

Q. And during that period of time has anyone come to you as an insurance man personally or as an officer or agent of this company, the respondent, and indicated to you that they have been misled by that statement in the advertising?

A. No, sir.

Q. Has anyone in your organization indicated to you—coming to you through channels as the administrative head of the respondent—that this advertising had misled people, this type of advertising, and somebody had been or had bought insurance based upon a misapprehension of the policy by virtue of this advertising?

A. No, sir.

Trial Examiner Hier: Off the record.

[fol. 125] (Discussion off the record.)

Trial Examiner Hier: Back on the record. Go ahead.

Q. (By Mr. Langs) Mr. Korn, the question has been raised about possible knowledge which you would have of complaints as the administrative head of respondent. In what way are complaints—either as to advertising or any other matter—brought to your attention?

A. By the various departments where the complaint may have arisen.

Q. Is that a policy that the company has that you have issued to these department heads to bring them to your attention?

A. If they are material, yes.

Q. And when you have made your answers in the past, as the administrative head, and that you have not received any information about complaints pertaining to this advertising, these questions which I have asked of you, you are referring to information which you have directed be brought to your attention through the different departments?

A. That's correct.

Q. And when I have asked you the question about whether you personally have received information about anyone claiming that the particular statement has misled an individual as to the policy are you using your own personal knowledge and years of experience which you have had in this type of insurance?

A. Yes, sir.

Q. While you were acting as an agency, in the agency department, how many policies, approximately—would it [fol. 126] be several thousand or several hundred—of accident and health and hospital, medical, surgical policies and so forth—were written by your agents and those who would come under your direction?

A. Several hundred thousand.

Trial Examiner Hier: That is the issuance of each one of these policies, the exact number of policies issued?

Mr. Langs: For this particular company, yes.

Trial Examiner Hier: Yes.

Q. (By Mr. Langs) How many years have you spent with the National Casualty?

A. Fourteen years.

Q. And prior to that what was your connection? What company did you work for?

A. Continental Casualty Company.

Q. And how many years did you work for Continental Casualty?

Seventeen years.

Q. So between the two companies that covers your span of experience and knowledge in this A and H business and hospital and surgical business?

A. That's correct.

Mr. King: Mr. Langs, may I ask whether his last statement had reference to experience with National? He made a statement two hundred thousand policies.

Mr. Langs: He said several hundred thousand.

The Witness: Several hundred thousand.

Mr. King: Is this when he was employed by National?

[fol. 127] The Witness: That's right, with the National Casualty Company.

Mr. Langs: In agency work.

Q. (By Mr. Langs) And during the course of your experience as the one directly responsible for selling these policies, these statements were a part or statements of similar purport were a part of the advertising literature which was used during your term in the agency department, is that correct?

A. That's right.

Q. So that when you speak of not having had personal knowledge or not having knowledge either as an administrative head which you have been recently during the past few years, it grows out of your experience covering these many hundreds of thousands of policies which were issued by the Department which you managed during a certain number of years, is that correct?

A. That's correct.

Q. And it also covers your individual knowledge of the business for a matter of thirty-one years?

A. That's correct.

Q. Now, the next item which the commission has set forth is, "I understand this peace of mind and security will be mine from the first day; even for life." And apparently they picked up that information from Exhibit 6(i), Commission's Exhibit 6(i), and I show you Exhibit 6(i).

That circular or little memo I believe has to do with benefits, is that correct?

[fol. 128] A. That is correct.

Q. In other words, that particular memo assumes that there is an insured, and he has a policy and he has received an accident which is covered under the policy, and then it describes the benefits which an insured would receive, is that correct?

A. Yes.

Mr. Brookfield: Mr. Examiner, I have to object to that question. I think this exhibit speaks for itself.

Trial Examiner Hier: Well, I don't know that he can't say what he had in mind when he wrote it or had it written. I think the exhibit speaks for itself. I am—like you are—bound by the exhibit. Everybody can draw their own inference from it. The answer may stand. Go ahead.

Q. (By Mr. Langs) During the——

Mr. Langs: I believe, your Honor, that in the complaint they have selected this particular statement out of context, and I think a reading of the complaint will indicate this, as an indication that the policy itself will be a continuing policy; that the security goes to the policy and they have paid no attention to the fact that the letter or the particular comment refers to benefits. I appreciate that is argument that we will have to present as to our conclusion or position as to the particular document.

Nevertheless, I simply want this man to identify this particular exhibit, and its use so far as the company is concerned.

Trial Examiner Hier: His whole argument around Sec-[fol. 129] tion 1 in Paragraph 3, as I see it, their contention that the statements quoted raise an inference of non-cancelability, is that right?

Mr. Brookfield: Yes.

Trial Examiner Hier: They don't cancel anything else because the policy they say——

Mr. Langs: That's the point I wanted to bring out here—that this has nothing to do with cancelability at all. The only thing it has to do with is in connection with benefits.

Trial Examiner Hier: All right.

Mr. Langs: Once the claim has been allowed, the benefits will go on for the man's life. The statement is a true statement as to benefits.

Trial Examiner Hier: All right, go ahead.

Q. (By Mr. Langs) Mr. Korn, again referring to Exhibit 6(i), Commission's 6(i), that covers what, again? What is the main point of discussion? Is it policy, benefits, acceptance, or what?

A. As I read it, when I am sick, when I get hurt, the benefits are stated thereunder, under each of these captions,

and the sentence to which you refer, the quote to which you refer, follows immediately thereafter. If you read the first sentence, "Without obligation, tell me how I can have six hundred dollars a month", I can't see anything other than it refers to the benefits as exhibited in this article.

Trial Examiner Hier: Let me see it.

The Witness: They are not speaking of the policy. They are speaking of benefits.

[fol. 130] Q. (By Mr. Langs) Was that the intent of the company, the Respondent in this case, in publishing that information?

A. That is correct.

Q. That was directed to the benefits?

A. Correct.

Q. And it has nothing to do with acceptance age, does it?

A. I see no reference in it, in that particular——

Q. That has nothing to do with whether a person receives a medical examination or not? Nothing about that in there?

A. I didn't review the entire piece. There is something at the bottom, yes.

Q. There is something at the bottom?

A. Yes. "No medical examination required".

Q. That indicates—we will come to that when it comes up a little bit later, but so far as you are concerned, it covers the benefits that this company would pay under a policy?

A. That's correct.

Q. It wasn't put out for any other purpose?

A. No, and I think that is exemplified by even the extent of the style of type. It appears as the man's own statement.

Q. Now, again, in the evolution of benefits, in this type of policy, what has been the experience of the industry as to the type of benefits or the amount of benefits that were paid in years gone by and the evolution of those benefits? Have they increased or decreased? What has been the program?

[fol. 131] Mr. Brookfield: Mr. Examiner, I renew my objection to this type of testimony.

Trial Examiner Hier: Well, Mr. Brookfield, I might as well tell you now this may be the first case to reach the

Commission. I don't know. There are thirty-one of these cases pending. While I may agree with you slightly or to some extent on some of your objections, I do think the insurance industry as a whole—and this respondent in particular—should have as full a picture as possible before the Commission, even though some of it may be technically irrelevant or actually irrelevant and immaterial under ordinary false and misleading advertising rules, and for that reason I am going to overrule this objection and extend to the respondent as fairly good leeway in presenting its picture because, as you know, there is but one single man on that Commision today who has had any appreciable amount of experience in false and misleading advertising cases,—just one.

I am going to allow this in. Go ahead.

Q. (By Mr. Langs) My question, Mr. Korn, concerned the evolution of benefits as may have been developed by the industry in the past as compared to the present. Will you indicate such evolution as you have indicated in the other type of policies?

A. As the industry progressed, I am speaking of the accident and health industry, there has been liberalization, increased benefits, more coverage, greater age acceptance of risk, greater span of age acceptance of risks. It has been the evolution in the insurance industry.

Q. As these benefits have changed from time to time have [fol. 132] different companies set up different benefits?

A. Yes, sir.

Q. Has it been necessary for your company to indicate your benefits as distinguished from what they might read as to benefits by some other company?

A. Yes, sir.

Q. And referring to Exhibit 6(i), Commission's 6(i), does that indicate the benefits under several different circumstances that a person would receive?

A. That's correct.

Q. And am I correct in assuming that as to some other companies the benefits might be different?

A. That's right.

Q. That is simply an indication, then, of the benefits which this company would pay?

A. That is correct.

Q. Now, has anyone, Mr. Korn—as to your personal knowledge in the insurance business—strike that. Let me ask it this way: Has it been common practice during your years in the insurance industry, this particular industry, to establish—or not to establish, but to set forth to the public, the people that are going to buy the type of benefits or the amount of benefits that an insured could receive under any given set of circumstances.

A. That is correct.

Q. In other words, that has been an advertising method [fol. 133] which has been used for all of the years you have been in the insurance business?

A. It has been a common practice to set forth the benefits available if such were desired under a given policy.

Q. And that has been the—that practice has been used for the purpose of distinguishing a particular company's product from another company's particular product; namely, the benefits.

A. That is correct.

Trial Examiner Hier: Mr. McQuire, would you like a recess? You, Mr. Korn?

The Witness: I am perfectly willing to go on.

Trial Examiner Hier: It is all right with me.

Q. (By Mr. Langs) Now, during your experience in the insurance business, and your personal knowledge, has anyone come to you, Mr. Korn, and said that "I bought a policy based upon material set forth in Exhibit—or similar material set forth in Commission's Exhibit 6(i)"—and said, "Mr. Korn, I was misled in buying a policy based upon this advertising"?

A. Not to my knowledge.

Q. This comes to your personal knowledge. Anyone ever come to you, personally?

A. No, sir.

Q. Now, has any information come to you through the administrative channels of the respondent that any claim has been presented on the part of an insured that the advertising material used in Exhibit 6(i) has misled them in buying a policy?

A. No. My attention has not been called to any.

[fol. 134] Q. I believe you testified that information pertaining to benefits has been used as an advertising medium all during your experience in the insurance business?

A. That's right.

Mr. Langs: Mr. Examiner, I would like to, at this time—we have brought in a man who operates a very large agency in Detroit, and in order to conserve his time I would like permission to withdraw Mr. Korn at this point and put on Mr. Tolmich because we have indicated to him that we would try to accommodate him as to his time if we possibly can. This examination will be along similar lines, but not quite as detailed, and will be substantially shorter than Mr. Korn's.

Trial Examiner Hier: Do you gentlemen have any objection?

Mr. Brookfield: I don't think so.

Trial Examiner: All right, let the record show, Mr. McGuire, that Mr. Korn is temporarily excused as a witness for the purpose as stated by Mr. Langs.

[fol. 135] Ben Tolmich was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Langs:

Q. Mr. Tolmich, will you state your full name for the record, and the Examiner?

A. Ben Tolmich, T-o-l-m-i-c-h.

Q. Where do you reside, Mr. Tolmich?

A. Detroit, 18604 Cranbrook Drive.

Q. How long have you lived in Detroit?

A. Since 1916.

Q. How many years have you spent in the insurance business?

A. This is my thirty-fourth year.

Q. And during that course of time—the thirty-four years—what type of work have you done? What type of insurance work have you done?

A. I have sold life insurance and accident and health insurance.

Q. And have you sold hospital insurance?

A. That is included in the accident and health.

Q. When you refer to accident and health you are taking its broad scope of hospitalization insurance?

A. That's correct.

Trial Examiner Hier. Are you what they call a broker or a general agent?

[fol. 136] The Witness: I am a general agent for a life company and the National Casualty.

Q. (By Mr. Langs): As a general agent what are your duties?

A. To sell, hire agents to sell, to supervise the men's activities, and number one should have been, to give service to the public on the policies that we have in force.

Q. During your years—thirty-four years—how many of those years have you acted as a general agent?

A. As a general agent I started thirty-two years ago, life insurance general agent.

Q. How many years have you been a general agent for accident and health type of insurance?

A. This is the seventeenth year.

Q. Where has your business as a general agent been during that thirty-two year period?

A. Where?

Q. Yes.

A. In Detroit.

Q. All of your time has been in Detroit?

A. All of it.

Q. Where is your office located?

A. Two years ago I moved out on James Cou-ens, which is 18604 James Couzens.

Q. And how many agents do you have that work for you in your capacity as a general agent?

[fol. 137] A. There are different categories, direct agents that are housed in my office are ten. I have many agents of other companies writing business through my office.

Q. As one of your functions as a general agent have you sold insurance yourself personally?

A. I certainly did.

Q. And have you sold accident and health type of insurance?

A. I have.

Q. And how many hundreds or thousands of policies would you say that your particular general agency has written approximately on accident and health type of insurance?

A. I would guess about fifteen thousand.

Q. And have you had an opportunity, Mr. Tolmich, to watch the evolution of Accident and Health Insurance over the last many years or during the number of years that you have acted as an insurance broker, insurance agent?

A. Yes, sir.

Q. Has there been a change in the type of policy—that is, the liberalization or benefits or coverage—during the time that you have had experience in the insurance field?

A. Yes, sir, there has.

Q. Can you indicate for the record and for the benefit of the Examiner your information taken from your personal experience as to the method of program of selling an A and H or accident and health policy?

A. I don't quite know exactly what you mean.

[fol. 138] Q. Well, how would you get your lead and what would you do with the lead, and how would you proceed up to the point of having closed a deal to sell a policy and have it concluded and accepted by the National Casualty Company? Start from the beginning and go right through until the premium has been collected, the policy has been accepted, and everybody is happy and satisfied.

A. The hospitalization service has become so big that we started to advertise for prospects and we sent out literature giving people an idea of what we have to offer, and then we would go out when they showed an interest, explain the coverage, explain the exclusions, and then ask them whether they could qualify for it. As a matter of fact, the phrase, "Let's see if you can qualify" is an accepted sales procedure by most companies.

Once they have agreed to qualify we start on the application. Do you want that much detail?

Q. Yes, I want all of the detail. You give it to me just like it happens.

A. Then we get all of the information, and when we write it up we ask them to read over the questions on the

applications, whether they are correctly answered, and then ask them to sign it if it is correct, if all of the answers are correct, and of course the one that we are very careful to point out is—I believe it is the last question—and that is, "Do you understand——" What is that question? It has to be so, what you say. Otherwise, there is no benefits, or some such.

Q. This may be what you are referring to. I show you, [fol. 139] Mr. Tolmich, Commission's Exhibit 15(b), and it is also labeled Commission's Exhibit 18(b), which has an application form on the reverse side of that exhibit.

A. Oh, yes. Question 14. "Do you agree that the falsity of any answer in this application for a policy may bar the right to recovery there under, if such answer materially affects the acceptance of the risk or the hazard assumed by the company?" In other words, it is explained that they must tell the truth. I don't know whether that is pertinent or not.

Q. That's what you referred to a moment ago when you said this last question?

A. Yes.

Q. All right. Go ahead.

A. All right. When the policy is issued it is delivered by the agent. We keep a record of each policy. We send out notices of premiums, send out receipts, collect the premiums, remit it to the company, and then give the necessary service to the policy holder, such as providing him with claim papers and answering questions regarding claims and such, and there are various other services usually that come up.

Trial Examiner Hier: You used the expression, Mr. Tolmich, "We send out literature to prospects". Is the literature you send out that which is composed by the National Casualty Company, or is it your own composition, or both?

The Witness: It is passed by the National Casualty Company.

Trial Examiner Hier: That may be true. That implies to me that some of it is of your own composition, which you [fol. 140] get them to approve before you send it out. Is that correct?

The witness: I make suggestions. They make the composition.

Trial Examiner Hier: They make the composition?

The Witness: They print it, and then let me have it for use, distribution.

Q. (By Mr. Langs) Now, you say you make suggestions; you, being out on the firing line, attempt to give them suggestions on points which you feel might be helpful in distinguishing the policy of this company from other companies, or what type of suggestions? Why do you give suggestions to the company?

A. Fine. I have attempted in the past to suggest to the National Casualty Company to use certain phrases that I have seen other companies use, which they refused time and again. That was one type of suggestion. The others were merely pointing out coverages that our company has, and privileges that our company has that other companies do not.

Q. In other words, you wanted them to point out the distinguishing marks of the National Casualty product, as compared with some other company's product?

A. That is correct.

Q. Now, as a selling agent, has the National Casualty Company furnished you with specimen policies for your use in selling?

A. Certainly. Every agent has that.

Q. And when you are talking with a particular prospect about a particular type or kind of insurance, is it discussed with respect to the specimen policy that is given to you [fol. 141] by the National Casualty Company?

A. That is the most convincing way of selling. I show him in black and white exactly what is going to be given to him. That is the way we use it.

Q. Do you review that with the prospect at the time you are attempting to sell it?

A. Yes, and that also, incidentally, is a very good selling. —I am speaking now from a sales standpoint—is to show them what they will not get, and it has a very desirable effect in the sales procedure, by saying "Now, this is what is not permitted", and then you read usually the paragraph of the exceptions.

Q. You mentioned a moment ago the fact—something about claims. One of the insured, one of your customers, if they have a claim or are ill and have benefits coming under the policy which you have sold, does he come into your office

or call you on the phone and say, "I am in a certain hospital", or come in and talk to you about the claim?

A. Certainly. A thousand—well, many, many hundreds of times, I will say.

Q. Isn't it true that in probably ninety-nine and a fraction per cent of the cases that the claim comes to your office first? The person that you contacted is your personal friend, your customer. He comes there first with the claim, and then it is referred into the home office?

A. That is true, because we send out the notices, and they have our address and telephone number, and therefore they contact us first.

Q. Now, that gets us down to certain items which I want to cover quickly. The National Casualty Company has been [fol. 142] complained against by the Federal Trade Commission with reference to certain comments which appear in advertising, and the first one they have raised a question about is with reference to the statement, "No increase in Premium because of age—No decrease in benefits because of age."

Now, Mr. Tolmich, are there policies of which you have knowledge, either at the present time or have existed in the past, that provided for increase in premiums or decrease in benefits at specific age limits?

A. Yes.

Q. You have knowledge of that?

A. Certainly.

Q. In the beginning of the A and H business the—what is your recollection of whether the policies more generally had an increase in premium at specific ages and decreases in benefits at specific ages, as compared to what we will call a level premium? Which type of program?

A. Thirty-odd years ago neither one, because they didn't write them past fifty-five or thereabouts.

Q. There was that limitation in there?

A. That's right, and then they started to write them to an older age, and some companies had either an increase in premium or a reduction in benefits. I think a reduction in benefit is what it usually was, if I remember right.

Q. And then in more recent years this so-called level premium—that is a premium which was permanent—has

[fol. 143] developed as compared to the former procedure, is that correct?

A. Not all companies.

Q. No, I don't mean all companies, but it has become more prevalent?

A. Yes.

Q. So today there are two types of insurance. That is, in this particular field. Now, we are confining all of our discussions to the A and H field?

A. Yes.

Q. There is a type which has a level premium and there is another type which has either an increase in premium or a decrease in benefit.

A. That is correct.

Q. So that the—it is necessary for the company to indicate in its advertising some way as to which plan it is following?

A. Yes.

Mr. Brookfield: Mr. Examiner, I think I will object to this type of questions. I have refrained from objecting to leading questions in the past, but this is not——

Trial Examiner Hier: You are objecting to the fact the question is leading?

Mr. Brookfield: Yes.

Trial Examiner Hier: Yes, it is leading. I will sustain the objection.

Mr. Brookfield: Not only this, but a number of others to which I haven't taken exception.

Trial Examiner Hier: While Mr. Langs is looking [fol. 144] through his notes, Mr. Tolmich, I would like to ask you some questions. I assume that, from what you have said, you do not attempt to sell illiterates?

The Witness: Illiterates don't usually buy.

Trial Examiner Hier: That's what I want to find out. Now, do you restrict the range of your prospects? That is, those to whom you attempt to sell—to any particular income bracket or any particular educational bracket?

The Witness: We don't have any way of limiting the educational bracket, but usually the income bracket we attempt to cover those who have a need for this type of protection over and above what they now get in these fac-

tories. Therefore, it would require them to earn a little above the average.

Trial Examiner Hier: What is the average? I don't know what you are talking about?

The Witness: Today we find the average runs something about five thousand dollars.

Trial Examiner Hier: You don't attempt to sell anybody who makes less than that?

The Witness: No, that is not so. We have no way of knowing, but when a man is making or taking free coverage, and he already has his group coverage, he don't need it and he therefore won't buy it. We don't attempt to sell it. When we find someone that is in need over a reasonable amount of what he is already covered for then we of course attempt to sell him.

Trial Examiner Hier: You say he already has this group [fol. 145] coverage but there are, I suppose, a number of prospects in Detroit who do not have group coverage, who do not work in factories. Waitresses, cab drivers, perhaps? I don't know.

The Witness: Yes.

Trial Examiner Hier: Do you reach those people?

The Witness: Not cab drivers. Very few waitresses. Mostly the working people, the only ones we can reach by mail.

Trial Examiner Hier: Go ahead.

Q. (By Mr. Langs). Now, I show you exhibit 6(j), Commission's Exhibit 6 (j), Mr. Tolmich, and refer you to the statement in the lower portion of this, which reads, "No increase in premium because of age—no decrease in benefits because of age". Over what period of time have you seen that language or similar language to that used in either advertising or discussion of the A and H policies with prospective customers?

A. That question is what, sir?

Q. Over what period of time, how many years, have you seen this distinguishing mark?

A. Many, many years, as far as I can remember. I can't tell you exactly.

Q. I don't mean exactly. I mean approximately. Would you say it is ten years, fifteen years?

A. It is at least in the last ten years that I can remember.

Q. In other words it is a matter of many years that that comment has been used to distinguish a so-called level premium policy from one that has an increase in premium or a decrease in benefit policy?

[fol. 146] A. That's right. The reason that has been used in the past by other companies, I might enlighten you. So many companies who increase the premiums would advertise "No decrease in benefits". Other companies who decreased the benefits would advertise, "No increase in premium because of age". Therefore, when we do neither, why, we had it printed. It is just the natural thing to do.

Q. All right, thank you. Now, during the course of time —the many years that this type of language has been used —has any insurance customer, a person you have sold a policy to, or any person that has bought a policy through your agency, through one of your other agents, would come in to you and say, "Mr. Tolmich, I bought a policy here because of the language, 'No increase in premium because of age—no decrease in benefits because of age', and I was misled by those words in buying this policy."? Has anyone ever come to you and told you that?

A. No, sir. Never.

Q. Has anyone ever come to your agency and told you that?

A. To my knowledge, never.

Q. To you personally it has not come?

A. No.

Q. No information?

A. No.

Q. In all of your years in the insurance business?

A. That is absolutely true.

Q. Now, I show you Exhibit 13(b), Commission's 13(b), and on the bottom of this particular form we find the language, "For employed men and women ages sixteen to [fol. 147] sixty-nine years inclusive". I believe you stated a while ago that this age limitation for qualification has varied. Years ago it was fifty, or something like that, and it has changed. Is that correct?

A. That's correct.

Q. During what period of time have you had experience in seeing this particular type of statement? That is, that the age limits may have changed during the course of years,

but what period of time have you seen some statements similar to that which established the qualification of acceptance to an insurance policy?

Mr. Brookfield: Mr. Examiner, I don't think he testified he had seen that particular piece of paper.

Mr. Langs: I am asking him during what period of time he has seen that statement.

Trial Examiner Hier: Have you seen it?

The Witness: This phrase?

Trial Examiner Hier: Yes.

The Witness: Oh, many, many times.

Trial Examiner Hier: For how long?

The Witness: At least ten years or more.

Trial Examiner Hier: All right.

Q. (By Mr. Langs) During the course of time have you seen different age limits set in a statement similar to that?

A. Certainly.

Q. And have you communicated to prospective customers [fol. 148] any information about those age limits? When you have talked to a customer have those age limits meant anything?

A. When we go to a prospect to sell them a policy we fairly well establish his age, and therefore whether—as long as he is between the ages of sixteen and sixty-nine—there is no discussion necessary.

Q. In other words, that is the acceptance age for qualification?

A. Of course. It used to be twenty to fifty-five. Now we have a sixteen to sixty-nine. There are some companies that go as high as eighty, I understand, and that is the only way we can eliminate people from becoming interested in this particular service if they are not in that age bracket.

Q. That is the purpose for which this statement is used?

A. That is, as I understand it.

Q. During the course of your experience has anyone come to you, Mr. Tolmich, and said, "I bought a policy from you personally or through one of your agents, and because of this statement, 'For employed men and women ages sixteen to sixty-nine years inclusive', I was misled in buying your policy."?

A. No, sir.

Q. Now, I show you Exhibit 6(i), Commission's 6(i), and ask you to note down in the lower portion of it a part, "I understand this peace of mind and security will be mine from the first day, even for life."

Now, this particular exhibit has been—well, first of all—

A. May I read it? I have never seen this particular folder. I have seen that statement, "Peace of mind and security will be mine from the first day, even for life". It [fol. 149] is what we call in the sales jargon as appealing to the heart by telling them that in case of an accident, in case of sickness, they will be protected. Of course we always refer to the things that they are not protected for in the policy, but according to the contract we use this statement time and time again; "In accordance with the provisions of the policy." That is being used constantly.

Q. That covers, then, I take it, the benefits which one would receive,—refers to benefits one would receive in the vent of accident or illness?

A. That's right.

Q. And the security or peace of mind for life covers the benefits one would get after the injury or illness?

A. Of course. How else could it?

Q. I simply want your statement on it; what you would understand it to be.

Now, you indicate that you have seen that statement. Not in this particular literature but in other items, for some period of time. How long would you say that you have seen a similar statement to that? For what period of time? How many years?

A. Well, I would say as far as I can remember at least ten years.

Q. And during the period of time that you have sold A and H policies where this statement has been used, has anyone come to you and said, "Mr. Tolmich, I bought a policy from you and this particular statement misled me in buying this policy."?

A. No, sir. Never.

[fol. 150] Q. Has any agent of yours ever presented to you any contention by a customer that they had been misled in buying a policy using this particular language in the advertisement?

A. I have never been told that.

Q. Now, also, Mr. Tolmich, do different companies have different benefits?

A. Yes.

Q. And is it customary or the practice for the National Casualty to indicate its benefits as distinguished from the benefits which some other companies would offer?

A. Yes, of course.

Q. And Commission's Exhibit 6(i)—which, of course, speaks for itself—sets forth certain benefits that would be received under certain circumstances. Has that been a customary practice of indicating the benefits which National pays as distinguished from other companies in your select program?

A. Of course!

Q. Now, we come to one, Mr. Tolmich, that has been set forth by the commission. "No medical examination required".

Now, in your experience as an insurance man—and you have had experience both in the life field and the accident and health field—are there types of insurance in which a medical examination is required before a policy will be issued?

A. Yes, the life insurance applicants must be examined. As a matter of fact, all life insurance applicants used to be examined and there being—up until fifteen or twenty [fol. 151] years ago, there was very little accident and health insurance sold. Most people understood that to buy insurance of a personal nature requires an examination. Our policy does not. There are some accident and health policies that do.

Q. So that this is a statement that no "medical examination required" is simply a statement of actual facts which exist as far as this company is concerned?

A. That's right.

Q. As distinguished from what some other company might require?

A. That's right.

Q. Now, this statement "No medical examination required", how many years have you been familiar with that statement or the use of it in the selling of A and H policies?

A. Oh, twenty-odd years.

Q. And you mentioned that there are certain policies—A and H policies—where a medical examination is required. What type of policy—or is there a particular type of policy—that does require medical examination for A and H?

A. It is known as the guaranteed renewable type of accident and health policy.

Q. Or sometimes referred to as non-cancellable insurance?

A. That's right.

Mr. Brookfield: Mr. Examiner, I think Mr. Langs' questioning—he is testifying, himself. I ask a continuing objection to this line of examination.

[fol. 152] Trial Examiner Hier: Sustain the objection, Mr. Langs. The questions are leading.

Mr. Langs: The second question, I don't think perhaps was leading.

Trial Examiner Hier: Perhaps not, but this last one was; this last one was leading. It takes longer to go the other way. If he feels that is what should be done I will have to sustain him.

Q. (By Mr. Langs) You mentioned that this one policy, where medical examination was required, was a guaranteed renewable policy. Does that policy have any other type of name?

A. It is known as the non-cancellable health and accident policy.

Q. What, in the industry, does the use of this statement, "No medical examination required",—is it used in any way to make a distinction between the two types of policy?

A. The question is, is that statement used to make a distinction?

Q. Does that indicate a distinction; indicate—"no medical examination required"—does that indicate the policy that uses that or the advertising that uses that is one type of policy, and the other where it is not used is another type of policy?

A. As an insurance man that is the way I have always known it, of course.

Trial Examiner Hier: The purpose of a medical examination, Mr. Tolmich, is to uncover latent disabilities which might increase the risk?

The Witness: That's correct.

[fol. 153] Trial Examiner Hier: It strikes me, as a layman—since I know very little, if anything, about insurance—when you say "No medical examination required", that gives rise to inference in the mind that they take you as is.

The Witness: I don't know what interpretation can be put on it. All I can tell you is my experience. When we speak to a person about buying an accident and health policy, always we use the phrase—"If you can qualify". That means if he can answer those questions, and the company accepts him on these statements. You might read it and put another interpretation on it, but from my experience they can't do it because they do not buy that. They buy when the salesman explains the coverage. So in our experience, "No medical examination required", that merely means we do not send a doctor around. We take the necessary information.

Trial Examiner Hier: All right.

Q. (By Mr. Langs) Has anyone, Mr. Tolmich, during your experience, come to you—and paraphrasing the question a little bit which Mr. Hier has asked you—said, "Here, you advertised 'No medical examination required', and I gave you this information in answer to the specific questions about illness and so forth"—he said he didn't have any or that he may have made some statement that was not correct, but later on he comes back and says, "Because you advertised 'No medical examination' I understood you to mean that you were going to take me, even though I was ill and suffering from some particular disease, and therefore you misled me by the use of the word or term 'No medical [fol. 154] examination required'."

Has anyone ever come to you in your experience and told you that?

A. Not once.

Q. Has any claim or such a contention ever come to you through any of your agents?

A. No, sir.

Q. Has anyone ever indicates to you, as the customer, that you were selling, at the time you were attempting to sell him, that your statement "No medical examination required"—said to you, "I understand by this fact that I don't have to take a medical examination. You are going

to take me whether I am well or ill." Have they ever told you that?

A. We have never had anyone question that, because we used the phrase in our presentation that "If you can qualify", which means that he would have to pass the questions on the application and therefore that question has never come up.

Q. Now we go on to another type of question, several of them, which are of similar purport, which the Commission has raised, as follows:

"The most complete coverage at the lowest rates: Monthly benefit up to three hundred dollars per month paid from the first day of any sickness or accident plus three hundred dollars per month for hospitalization."

Is it true that the National Casualty Company sells a policy or has a policy for sale that pays benefits up to three [fol. 155] hundred dollars per month?

A. Yes, it is.

Q. And is it true that they also have a policy which covers up to three hundred dollars per month for hospitalization?

A. Oh, yes.

Q. Now, the policy itself, does it—the exhibit which is set forth as to the medical and surgical benefits—it enumerates the specific item and the amount to be paid. Does that indicate in that particular amount the three hundred dollars at that point?

A. You are referring to the surgical, hospital or accident-health indemnity?

Q. The surgical and hospital where they have a list of surgical benefits.

A. Surgical benefits has a one hundred fifty dollar schedule, reduced, and then we sell either that which is called one hundred per cent or two hundred per cent, is it? No, one hundred fifty per cent, which is a maximum of two and a quarter; or two hundred per cent, which is three hundred dollars down.

Q. Now, When you say "three hundred dollars down", what do you mean by that?

A. Well, three hundred dollars for the major operations, and smaller amounts for the less costly ones.

Q. Now, has anyone come to you, Mr. Tolmich—first of all, may I ask you this: The method of describing in literature the maximum benefits which a company would pay [fol. 156] for particular claims, has that been used generally in the advertising material submitted by insurance companies?

A. The method of describing, did you say?

Q. The benefits, describing the benefits.

A. Oh, that is common practice. That expedites the explanation of the coverage until we get to the closing when we show them the exceptions.

Q. Now, how long, to your knowledge, has this use of benefits—and in this case we are talking about the monthly benefits—either in a so-called accident and health or hospitalization—how long, to your knowledge, over what period of years, has that technique or approach been used in the selling of insurance, saying "Our benefits are so much"?

A. That's for the past thirty-odd years, since I have been in insurance, I have seen that.

Q. Has anyone come to you, Mr. Tolmich—I show you Exhibit 6(j), Commission's 6(j), and refer you to the statement which appears in the upper part, which has been circled. Will you just read that statement?

A. The most complete coverage——

Q. Read it to yourself. You don't have to read it outloud.

A. I see. All right. Yes, sir.

Q. Have you seen a statement similar to that at any time during the course of your experience as a salesman of insurance? One of similar purport? Maybe not the exact working, but one of similar purport?

A. Of course I have seen lots of literature that is de- [fol. 157] scribing the features of a policy, and unless you make it glowing you are not—it has no value; as long as it is honest, to me, that is factual.

Q. Now, that is a description of benefits, basically that is what it amounts to, is that correct?

A. Yes.

Q. You have seen a statement describing benefits as a means of selling over, you have indicated, some thirty-odd years?

A. Correct.

Q. And you know that the policy which the National Casualty puts out does provide for the benefits which are set up here in Commission's Exhibit 6 (j), is that correct?

A. That's correct.

Q. Has anyone ever come to you and indicated that during the course of your experience over the past many years, "Mr. Tolmich, I bought an insurance policy, and your advertising, you advertised that I would receive certain benefits as described in this exhibit, Commission's 6 (j), the language used, and you misled me. I was misled in buying the policy because of that advertising." Has anyone ever come and told you that?

A. No, sir.

Q. Has anyone ever told your agents, who, in turn, have brought the information to you that they were misled by that?

A. Never. I wonder if I could just make an all-covering statement?

Q. Yes, go ahead.

A. I would not tolerate any misleading statements in my [fol. 158] office, and I am merely prefacing this to say that at no time has any policy-holder questioned any of the literature as being misleading to them, at no time, any of it.

Trial Examiner Hier: I take it gentlemen, you gentlemen representing the government, that there is no contention on your part that this respondent has misled or misrepresented or deceived intentionally? The question here is what is and what is not misleading. Isn't that really the crux of this thing?

Mr. Brookfield: The commission of course repeatedly has held intention has no part of a Federal Commission case.

Trial Examiner Hier: I know that, but I wonder if there is any confention or intention implicitly charged.

Mr. Brookfield: I don't think so.

Trial Examiner Hier: All right, you may forget about that, Mr. Langs. It is not charged by application or inference that this company has intentionally misled anybody. The Hearing Examiner first makes up his mind

whether there is a reasonable probability the advertising will mislead, and then various people above him either agree or change or modify or something else.

Mr. Langs: May I make this observation. This evidence which we are producing at this point is not primarily for the purpose of showing the intent, that we intended to deceive. We of course deny we ever intended to deceive, and there can be no question that we ever intended at all, but it goes beyond that to a point which I think is very important; namely that here, we will have three witnesses, and their [fol. 159] experience is going to run almost a hundred years, and their knowledge of what the people reacted to in the past many years, to certain statements, we believe is important in determining the proper application or the proper construction to be given.

We do not believe that you can simply strike out and say to the people of the United States, "You didn't know what you were taking. You didn't know what you were buying. You didn't know. You weren't intelligent enough to understand."

Here is actual experience of these statements that I believe must be accepted as evidence, and good evidence, by the very people that the Commission is charging us with misleading, that they have not been misled.

Now, this is not a new product where a company comes out with a new product or a new statement for the first time, and blasts it out, and may be misleading or it may not be misleading, and all of a sudden everybody jumps on them and says, "You are sending out, you are putting out a false drug, a drug that has false advertising on it, and someone is going to be injured or something like that". This is entirely a different situation, and this is evidence to support our position that these people have so construed it, and therefore is evidence directly in line with the defense which we must put in. That is the important part of this. Not the question of intent. I do not understand they have raised any question of our ethics in this situation. Our ethics, I believe, have been the very best, and if I am wrong on that I want the Commission to indicate to me now so we can put evidence on that in.

[fol. 160] Trial Examiner Hier: No, I have no question in my mind about your ethics or your intention.

Mr. Langs: But the question here which you, as the Examiner, and later the Commission and so forth, have to decide, is what is the effect of this language. These statements of these people as to what the very persons who have been concerned with it—how they felt about it—how they reacted—is evidence, and very, very excellent evidence in my opinion as a lawyer. That's all we are using this for.

Trial Examiner Hier: Since we have already interrupted these gentlemen I will continue with this question. Mr. Tolmich, I have heard it said that in the sale of insurance the initial impression on the prospect is most important. Has that been your experience or not?

The Witness: The initial impression of the presentation or the agent's appearance?

Trial Examiner Hier: No, No. Not the agent's appearance. The initial impression as to advertising, either oral or documentary, which it makes upon the prospect, is the most important impression he receives at any time during any discussion, or leading up to a purchase or a refusal to purchase. Has that been your experience?

The Witness: The first impression is rather intriguing, but whether it is important, it is important to the eventual sale, but whether that is the thing that stays in his mind after the buys the policy, I can't see that.

Trial Examiner Hier: No, I don't mean after he buys it. That is the most important impression leading up to [fol. 161] the sale of the policy.

The Witness: That is the purpose, it is true. Interest.

Trial Examiner Hier: Very well. Off the record.

(Discussion off the record.)

Trial Examiner Hier: All right, Mr. McGuire, back on the record.

The Witness: For your information, while I am considered a large agency in accident and health, it is only twenty per cent of my total business. The other is life insurance.

Trial Examiner Hier: All right.

Q. (By Mr. Langs) Following this line of questioning which the Examiner has asked you, just a moment ago, what—strike that, and put it this way: Is there any benefit to the agent from the standpoint of his time, or anything else, that is accomplished by this advertising or similar ad-

vertising, or as to the insured or the person you are trying to sell; as to his interest or time? Is there any relationship as to those two points that are accomplished by this advertising, and if so, what?

A. The problem of the salesman is to find people to talk to who will qualify within the age bracket, the earning bracket that we are interested in contacting. This age in a selection of the type of prospect that we are looking for, and enables that type of prospect to get the protection that he would not otherwise get if he wasn't interested through this medium. Do I answer your question?

Q. See if I understand what you have said correctly. This is, then, to find the person who has an interest in this type of insurance: Number 1, so that his time and the time [fol. 162] of the agent is not taken up on something that the prospect is not interested in.

A. That's correct.

Trial Examiner Hier: Or can't quality for?

The Witness: Yes. Naturally.

Q. (By Mr. Langs) Now, I refer you to another statement, and I hand you certain exhibits, Commission's 15 (e) and Commission's 18 (g), Commission's 15 (g) and Commission's 18 (f), and they contain two statements pertaining to surgical bills and hospital room and board. I wish you would read those two statements that have been circled. Apparently the Commission has picked the language which they use from those statements, which reads as follows:

"Hospital room and board for one hundred days for each sickness or accident. Your choice of plans paying from five dollars to twelve dollars fifty cents per day. Pays full benefit even if your hospital room costs less."

Are you familiar with that statement?

A. Yes, I am.

Q. Is that type of statement used by you and your office in selling that type of insurance?

A. Yes.

Q. It has been?

A. Yes, it has been.

Q. Does that indicate the benefits which are payable under those policies?

[fol. 163] A. Yes. Not only does it indicate the benefits, but it also indicates that whereas other companies will only pay up to the expense, we will pay, regardless of their expense, so much per day.

Q. In other words, again this is a distinguishing mark?

Mr. Brookfield: Mr. Examiner, I move that answer be stricken. The paper speaks for itself. He can't explain the terms of a written instrument.

Mr. Langs: He certainly can explain what he did explain. That's the heart of this whole case.

Mr. Brookfield: He has insurance experience. He is not testifying as to what the public thinks.

Trial Examiner Hier: The test is as to the impact on the public. I don't see there is any harm in letting him explain it from that standpoint in this case. You may continue.

Q. (By Mr. Langs) Go ahead, Mr. Tolmich.

A. I believe I am qualified to give you the impact on the public because I have their reaction, and this explains what National does as compared to what some other companies do.

Q. And that particular advertising gets back to this general statement which we have had before, that some companies have one benefit and other companies have another benefit?

A. Yes.

Q. This is simply the distinguishing mark of National benefits under this policy?

A. That's correct.

[fol. 164] Q. Now, how many years have you seen that statement, and how many years has that been used in the selling of insurance by you?

A. This hospital room and board is something only within the past ten years or so, ten or fifteen years, probably.

Q. Has that statement been used by you during that period of time?

A. Yes.

Q. The benefits may have been greater or smaller, as the case may be, years ago?

A. Yes.

Q. But the same provisions have been used?

A. That's right.

Q. During the course of the years, which you have had experience with this particular statement, has any policy holder come to you and said, "Mr. Tolmich, I bought a policy from you based upon this statement, and I was misled by the purchase of that policy because of this statement."?

A. No, sir. That's a true statement.

Q. Has any agent of yours come to you and indicated that he had a customer who bought a policy and the customer came and said to him and reported to you, that they bought a policy and were misled by this statement?

A. No, sir.

Q. I show you Exhibit 15 (f), Commission's 15 (f), and same appears in Commission's 18 (d), and I ask you to read the portion which is encircled, which reads as follows: "Fifteen dollars per day for hospital room and board for one hundred days, each disability."

[fol. 165] Again this gets back to the benefits which are paid, and you previously indicated that is a common method or practice of selling, to indicate the benefits of this company to that of another company?

A. That is correct.

Q. Are you familiar with that particular statement in its use of selling the National Casualty Company Insurance?

A. Yes, I am.

Q. How many years have you had experience with that particular statement, and its use in the selling of insurance issued by National Casualty?

A. Seventeen years—yes, sixteen, seventeen—this is the seventeenth year.

Q. During that priod of time the amounts may have varied?

A. That's right. A hundred days was a common practice, but the amounts were—well, at the beginning they were as low as three thirty-three. Now, as it is shown here, fifteen dollars a day, and it pays in accordance with the provision of the policy for each disability up to one hundred dollars a day.

Q. Has anyone—any of your customers—come to you at any time during the many years that this statement has been used, and said, "Mr. Tolmich, I was misled in buying your policy issued by National Casualty, where I read this statement in some advertising or literature".?

A. No, sir.

Q. Has any agent brought to you any information that they received a complaint from a customer that they had [fol. 166] been misled in the buying of this policy because of this language?

A. No, sir.

Q. I now refer you to Commission's Exhibit 11 (e) and Commission's 12 (e), and refer you to that portion which has been circled, and that language reads, "Surgical operations whether performed in or out of the hospital, are paid up to three hundred dollars, in addition to hospital benefits. Full benefits are paid to all insured members of the family group."

Are you familiar with that particular statement?

A. Yes, I am.

Q. Has that statement been used by you in the selling of hospitalization insurance and other insurance coverage?,

A. Yes, it has.

Q. And for how long a period have you been familiar with that statement and its use in the selling of policies by National Casualty?

A. Well, ever since I have been with them. Over sixteen years.

Q. And the amounts which are set up therein have varied from time to time during the course of these years, is that correct?

A. That's correct.

Q. Other than that, the basic statement itself, though has appeared in the advertising which the company has put out and which you have used?

A. That's true.

Q. During the course of this period of time have you had any experience where a customer that you sold a policy to has come in to you and said, "Mr. Tolmich, I was mis- [fol. 167] led when I bought this policy, because of the statement—because of this statement"?

A. No, sir.

Q. Have you received any complaints from any of your agents that a customer complained to them, any one of them, that they had said, "We were misled in buying your policy because of this statement."?

A. No, sir. I have had lots of people call about that coverage, asking how much they were entitled to, when a certain operation came up, and I referred them to the schedule, depending upon whether they have three hundred, two twenty-five or a hundred and fifty. I gave them that information.

Q. Well, let me see if I follow you there. Someone has called you and said, "I have a three hundred dollar surgical policy."

A. That is correct.

Q. And they want to know what?

A. Well, let's say they had a hernia operation. They wanted to know how much they were entitled to under that surgical schedule, and I would tell them.

Q. Now, I believe you have already testified that the schedule shows on its face actually a maximum of one hundred fifty dollars for certain items there.

A. That's correct.

Q. But, nevertheless, that amount can be increased by increasing the premium on the basis of two hundred per cent, and so forth?

A. That's right.

Q. So that this—the question which you received, then, [fol. 168] from the man who was insured, was applied to the three hundred dollar policy. He wanted to know what was his coverage, as to a hernia, which you used under that particular policy?

A. That is merely one. I have had many, many of them for that purpose, knowing that it is not three hundred dollars. It is according to the schedule, based on the type of operation. That is the thing involved.

Q. I next show you Commission's Exhibit 15 (e) and Commission's Exhibit 18 (g), which contains certain language. You had that once before, but another particular statement has been lifted from that, which statement is this:

"Surgery bills from five dollars to three hundred dollars for sickness or accident."

Are you familiar with that particular statement?

A. Yes, I am.

Q. How long have you know- that statement or used it in the selling of insurance?

A. Sixteen years.

Q. You have used it for the past sixteen years in the selling of insurance for National Casualty?

A. Yes.

Q. Now, the amounts which are set up in there would possibly vary from time to time, as the benefit may be liberalized?

A. Yes.

Q. Or a person bought a smaller amount of insurance?

A. Yes.

[fol. 169] Q. But the basic statement itself, you are familiar with for many years?

A. I am.

Q. And during the course of that time has any person that you have sold insurance to ome to you and said, "Mr. Tolmich, I was misled by that statement in the buying of this insurance."?

A. No, sir.

Q. Has any of your agents?

A. No.

Q. Have any of your agents come to you and indicated that they had received a complaint from persons who bought insurance, that they were misled by this statement in the purchase of that insurance?

A. No, sir.

Q. I next refer you to Commission's Exhibit 6 (f), and I ask you to read the statement which has been circled, which is apparently the place from where the Commission picked up certain language. That language reads as follows:

"Here's what we would pay you: Monthly income up to three hundred dollars for total disability from sickness paid from first day for two years with no confinement required at any time.

"Monthly income up to three hundred dollars for total accident or confining sickness disability paid from first day for as long as totally disabled, even for life."

Are you familiar with that particular language?

[fol. 170] Q. In the selling of National Casualty insurance policies?

A. I am.

Q. How long have you been familiar with that particular language?

A. For the past sixteen years.

Q. Now, the amounts which are set up in there possibly would vary from time to time?

A. Yes.

Q. But the general statement as to using the approach of benefits has been used through that period of years?

A. That's correct.

Q. Have any of the persons to whom you have sold policies of insurance come to you and said, "Mr. Tolmich, I bought that policy of insurance there from you, and I was misled in the purchase of that insurance by this statement."?

A. No, sir.

Q. Has any agent of yours who has had a customer—have they had a customer come to them and say, and it has been reported to you, that "We bought insurance, but we were misled by the purchase or in the purchase of that insurance by this statement."?

A. No, sir.

Q. I next refer you to Commission's Exhibit 21(b), and ask you to read that portion which is circled, and which the Commission has inserted in its complaint, which reads as follows:

"When you are disabled by accident or sickness, what do you need most? Cash. Economy disability [fol. 171] policy. The simple economical way to obtain basic income protection. Sound protection. Low Cost.

"For Accident: Accident income, blank dollars per month. Total Disability—full monthly benefit for twelve months. Partial Disability—one-half monthly benefit for one month.

"For Sickness: Sickness income, blank dollars per month. Confining total disability—full monthly benefit for six months. Non-confining total disability—full monthly benefit for one month."

Mr. Tolmich, are you familiar with that particular type of language?

A. Yes, I am.

Q. And have you used that particular type of language in the selling of insurance for National Casualty Company?

A. Yes.

Q. For what period of years have you been familiar with that type of language or similar language in the selling of insurance for National Casualty Company?

A. For over fifteen years.

Q. The words may have changed slightly, but the general outline has been the same except for amounts and other slight details that might have been changed?

A. Yes.

Mr. Brookfield: I object to that question as leading, for the tenth time.

[fol. 172] Trial Examiner Hier: Yes, it is leading, but this is an incidental matter.

Mr. Langs: I have got one more to cover, and I am trying to get through.

Trial Examiner Hier: You may answer.

The Witness: That's right.

Q. (By Mr. Langs) The answer is "That's right." Now, during the course of your experience you have used that in selling for how long a period of time? That language?

A. About fifteen years.

Q. And during that period of time have you had any customers to whom you have sold insurance come to you and say, "Mr. Tolmich, we bought this National Casualty policy from you, and we were misled in the purchase of that policy because of this language."?

A. No, sir.

Q. Has any agent of yours come to you and indicated that they have received information from a customer who bought insurance that the customer has claimed he was misled in purchasing insurance because of this language?

A. No, sir.

Q. One last item. I refer you to Commission's Exhibit 8(b), and ask you to note the language there which has been circled, which is apparently the place that the commission selected the statement from, which reads as follows:

"Your security, if insured or sick: You are protected [fol. 173] while at work or away from work. Benefits paid in addition to compensation and group insurance, twenty-four hours every day protection.

"Guaranteed monthly income for accidents. Guaranteed monthly income for sickness."

Are you familiar with that language?

A. I am.

Q. In the selling of National Casualty insurance?

A. I am.

Q. And for what period of time are you familiar with that language being used in the selling of insurance for National Casualty?

A. for the past fifteen years.

Q. During the course of the time that you have sold this insurance has any one of your customers purchased a National Casualty policy and come to you and said, "Mr. Tolmich, I bought a National Casualty policy through you, and I was misled in purchasing that policy by virtue of this language."?

A. No, sir.

Q. Have any of your agents come to you and indicated to you that they had a customer who purchased insurance, and after—had purchased National Casualty insurance—and stated they were misled in the purchase of that insurance by virtue of this language?

A. No, sir.

Q. Now, one last general question, Mr. Tolmich. Have you ever received from any customers to whom you have sold a National Casualty policy, a statement or a claim by [fol. 174] them that they were misled in purchasing the National Casualty policy by virtue of any misrepresentation which this company—by any representation which this company made to them by way of advertising—wherein they claimed that they purchased a policy under a misapprehension or because they contended that they were misled in buying it by virtue of the statements that were made in the advertising?

A. No, sir.

Q. Has any of your agents ever brought to you any information that any of their customers have indicated that they have been misled by virtue of any statement or repre-

sentation which has been made by National Casualty in its advertising so that the customer has said, "We have been misled in purchasing this insurance because of this statement.?" Has that ever been brought to your attention through agents?

A. The printed statement, you are referring to?

Q. I am talking about the printed statement. These things here which National Casualty puts out. Has any agent come to you and said, "The National Casualty put out a piece of literature and one of my customers has come to me and complains now that he was misled"—he or she was misled—"in buying their policy, because of that published information."?

A. The answer is "no".

Cross-examination.

By Mr. Brookfield:

Q. Mr. Tolmich, are you the agent—do you handle any [fol. 175] other life—I mean accident and health—besides National?

A. Yes, I do.

Q. What other companies?

A. Continental Casualty Company.

Q. Are they the same type of policies?

A. Same type.

Q. Is it not a fact, Mr. Tolmich, that all of these policies, this accident, health and hospitalization, the benefits are practically identical?

A. If you are referring to any specific thing that could be identical, but there are various provisions in each one. Each one has some highlights in their policy that they feature.

Q. Will you amplify that? What do you mean, that each one has some highlights.

Q. Well, they all pay, say, in an accident and health policy, a hundred, two hundred or three hundred dollars. They don't all pay from the first day. They don't all pay for a lifetime. Some pay for one year, some pay for two years, and some pay for five years. Then some take in only those who are from twenty to sixty, let's say. Others from sixteen to eighty. That's just some of the features that they have.

Q. The policy costs vary with the additional benefits?

A. That's correct.

Q. So that basically, dollar for dollar, you wouldn't get any more from one company than you would from another?

A. Well, not being an actuary, I wouldn't know that. I do know that some companies are more competitive for the same dollar than others.

[fol. 176] Q. Does National Casualty give its purchasers of accident and health more for their dollar than the Continental Casualty Company?

A. I believe so, yes. That's the reason I specialize with the National. I wrote this business with Continental Casualty before I joined National Casualty on April 1, 1939.

Q. And you continued to write all Continental Casualty?

A. All National.

Q. What?

A. I continued to do what?

Q. You said a minute ago you continued with National and with Continental Casualty.

A. Yes, because I have policy holders that I wrote before I joined National.

Q. You have written no new policies with Continental since you have been working for National?

A. With some exceptions—policies that National did not write—I wrote with Continental Casualty.

Q. Now, Mr. Tolmich, with reference to this advertising of National that you state that you mailed out, you, as a result of that mailing, received the names of prospects?

A. That is correct.

Q. Who contacted those prospects?

A. I contacted some of them. Most of them by the agents of my office.

Q. You personally go out and sell insurance now?

[fol. 177] A. Not since I am past sixty, I don't.

Q. For how long has that been?

A. Just a year or so.

Q. Do you or the home office handle the claims?

A. The home office is the final claim payer. We have contacts with these people before they make their claim.

Trial Examiner Hier: Do you pay any claims yourself?

The Witness: No, sir.

Trial Examiner Hier: Up to a certain limit?

The Witness: No, sir.

Q. (By Mr. Brookfield) How are those claims that arrive through your customers—how are they handled?

A. They call and report a claim with us. We asked them what kind of sickness or injury it is. We send them out the proper form. They often want to know what they are entitled to. We read the policy and tell them. Most of the times they just ask for the claim form, and we send it to them, and they send it to us or direct to the Home Office.

Q. Mr. Tolmich, have you had claims made by policy holders who thought they were entitled to coverage that the policies did not provide?

A. Coverage they didn't provide? I can't remember anyone referring to coverage that didn't provide. Oh, yes, I have had some people call, that's right, and say, "I have a hospitalization policy, and I am staying home. Am I entitled to anything?"

Trial Examiner Hier: I think what he means, Mr. Tolmich, is this: Have you had claims or inquiries leading up to claims or anything of that sort for illnesses, accidents, [fol. 178] and so forth and so on, which were within the policy exclusions?

The Witness: It is possible, but I don't recall any particular case of that sort.

Trial Examiner Hier: I would think that would happen all of the time. I mean, with every insurance company.

The Witness: Well, it doesn't happen as often as you might think. It is possible that people think they are entitled—usually they ask, "What am I entitled to?"

Q. (By Mr. Brookfield) Mr. Tolmich, have you ever had people apply for, say, a hospital policy for one hundred days, when they weren't entitled to a hundred days?

A. No, sir.

Q. Have you ever had them apply for a surgical operation more than the amount called for by the policy?

A. They don't apply for any particular amount. They merely give the facts, and they are paid in accordance with the provisions of the policy, so they make no application for any specific amounts.

Q. Don't they submit hospital bills and ask that they be paid?

A. They submit hospital bills with the claim form, and that's it.

Q. Are those hospital bills ever in excess of the amount that is paid them?

A. The hospital bills in excess? Yes.

Q. Well, then, those people expect more than they get, don't they?

A. No, they merely send in their bills to prove what they [fol. 179] are entitled to. They wouldn't be entitled to the fifteen dollars a day if they didn't have the bill to show for it, even though it was twenty dollars.

Q. Are they required to send in bills for the surgical operations?

A. Surgical operations? I believe that is an indemnifying type of contract, yes.

Q. In other words, if they were—if the doctor charged them only twenty-five dollars or fifty dollars for an operation which, according to the advertising or according to the schedule, they would be entitled to three hundred dollars, you would only pay the twenty-five dollars, is that correct?

A. If they are entitled to the twenty-five, then they would get the twenty-five.

Q. You would only pay them what the actual doctor bill was, is that correct?

A. No, they would be paid what the policy provision provides.

Trial Examiner Hier: What he means, if they happen to pick out some surgeon who wants five hundred dollars for taking out an appendix and he takes it out and submits a bill for five hundred dollars you don't pay five hundred dollars.

The Witness: Of course not.

Trial Examiner Hier: You pay what the policy provides?

The Witness: What the policy provides.

Q. (By Mr. Brookfield) What do you pay when the policy makes no specific provision for an operation?

A. Well, if it is so minor that he doesn't have a specific [fol. 180] amount, there is a minimum amount paid, which is also provided in the policy.

Q. I refer you to this language, Mr. Witness.

Mr. Langs: What are you referring to?

Mr. Brookfield: It——

Trial Examiner Hier: Commission's Exhibit what?

Mr. Brookfield: Commission's Exhibit 11(a), second page.

Trial Examiner Hier: Commission's Exhibit 11(a).

Mr. Brookfield: In the event of cutting operations or treatment of fractures not specified in the schedule of operations which are performed by legally qualified physicians or surgeons, the company will determine the amount to be paid for such operation on a basis commensurate with operations specified here under.

Q. (By Mr. Brookfield) Are you familiar with that?

A. Yes, I am.

Q. Now, what I want to know is how do you determine or how does the company determine what amounts are going to be paid for such operations?

Mr. Langs: Now, just a moment. Number one, Mr. Tolmich is not—in fact, he is not an employee of the company, as such. He is a general agent.

Number two, the document itself specifically specifies how it will be determined, and it is getting back to the same objection that counsel raised in my situation, that the document speaks for itself.

Trial Examiner Hier: Well, I don't know that it does. Mr. Langs, to somebody not familiar with an insurance [fol. 181] document. I wouldn't know what they mean by "commensurate with other operations".

I think he may answer. Take, for instance, this. Last week I had a mole or a wart removed from my left wrist. I suppose it was a surgical operation. There was some cutting done. It was burned. I don't know what he is going to charge me. It doesn't make any difference. What would you pay for that?

The Witness: Well, not being a claim man, I don't know. I have seen such claims come up, and I have always taken the position that the public pays me, not the company, and therefore, I must see that they get everything they are entitled to, and I do. If it is a minimum of five or ten dollars, as is listed in the schedule, that's what they get. There is

something in that schedule that is comparable to that type of an operation; if there is, then I see that that is done. Do I answer that?

Q. (By Mr. Brookfield) What they pay is entirely up to the company, isn't that correct?

A. I have seen the company make a mistake, and I call it to their attention, and they pay it, if they ever make a mistake.

Trial Examiner Hier: That isn't his question. The question is, the amount, was it what, commensurate with other operations in the schedule below attached. Is that what it says?

Mr. Brookfield: On a basis commensurate with other operations specified hereunder.

Trial Examiner Hier: The determination of what is or is not commensurate is solely within the province of the company, is what he means by his question.

[fol. 182] The Witness: Yes.

Trial Examiner Hier: There is nothing the insured can do about it, except to sue in Court on the basis it is not commensurate, I assume?

The Witness: Well, they can come back to me, and I, being the middle man, if I think the claimant is correct, I insist on the right thing being done, and they do it.

Trial Examiner Hier: All right, go on.

Q. (By Mr. Brookfield) Now, Mr. Tolmich, most of these policies that are sold through your office are sold by agents who are working on commission?

A. That's correct.

Q. The more policies they sell, the more money they make?

A. That's right.

Q. The more policies they sell, the more money you make?

A. That's right.

Q. Is it not a fact that every agent has his own pitch which he uses in explaining the policy which he is selling?

A. It is not.

Q. Every one of your agents uses the idential language in each policy, with reference to each policy which he sells?

A. I cannot——.

Mr. Langs: Just a moment, Mr. Tolmich. I don't know what counsel means by this word "pitch".

Trial Examiner Hier: A sales approach.

[fol. 183] Mr. Langs: I don't think that "pitch" in the usual connotation comes within the complaint in this case. The complaint is based upon certain specified advertising which this company puts out, and what an agent's pitch may be, define it as you want to define it, is certainly not within the purview of this Complaint.

Mr. Brookfield: Mr. Examiner, this witness testified on direct that every policy that was sold was explained at great length and the advertising material which was supplied to them was explained to the "witness" at great length, and I certainly have the right to ask that question in view of the statement of this witness.

Trial Examiner Hier: I think so, Mr. Langs, and I overrule the objection.

Mr. Langs: May I make this statement in the record. This witness did not indicate that there was an explanation of the advertising. He did state there was an explanation of the policy, and he went into details as to how that was handled.

The questions that were asked about the advertising were whether or not this witness had had any complaints from a customer about the advertising misleading them in the purchasing of a policy, and there is nothing in this record about explaining the advertising. You don't explain the advertising. The advertising is simply the means of finding the persons who are interested in saving their time and other things which this witness has testified to, but the statement which counsel has made is that there is an explanation in the advertising is not correct.

Trial Examiner Hier: He used the word "discuss"—"in [fol. 184] discusing the matter with a prospect"—that is pretty broad. You may answer. Do they all have the same sales approach, oral sales approach?

The Witness: Yes, I set up the sales presentation, and it is followed, as far as I know, to the letter. Not only that. Every man is taught to do his job so that over a long range it will be to his benefit to do it that way. They are not selling these policies just to get the money right away. That isn't good business over a long-range plan of operation.

Q. (By Mr. Brookfield) You mean by that, then, all of your employees engaged in only altruistic activities rather than trying to make money?

A. No, sir. They are intelligent selfish—intelligently selfish—by being truthful, and they find that it is a much better business in the long run.

Q. How many agents do you have?

A. Ten that I house, and one hundred-some that I license.

Q. And each of those one-hundred-and-some use the same sales approach that you prepare for them?

A. No. Those that are housed. The others are doing business through their own company, and they merely place business through my office when they cannot place it with their company.

Q. They are not selling National insurance?

A. Yes, they are, but not as the number one company.

Q. Do they use the advertisement which is put out by National?

A. Not for the purpose of circularization, no. They usually have their own prospects.

[fol.185] Do they use any of the advertising put out by National?

A. They use the application form, yes. They all have policies, samples.

Trial Examiner Hier: Do you distribute this descriptive literature which the respondent furnished to you to these one hundred-some-odd sub or affiliated agents?

The Witness: Yes.

Trial Examiner Hier: They have it?

The Witness: They have it, but not in bulk such as our men do.

Q. (By Mr. Brookfield) Now, Mr. Witness, referring now to the application, will you refer to Commission's Exhibit 12 (b). Are they furnished by you with literature similar to this?

A. Yes, sir.

Q. And do they use that literature in selling National policies?

A. Of course. They—it is necessary for me to explain this. These people have friends, and they use that for getting the rate on one side, and the information on the application on the other. They may refer to the other part,

the advertising features, but I would say that in most instances when they request that they already have the interest from the prospect. Therefore, it is not necesary to set up the features as we do when we do not have a prospect.

Q. But, as a matter of fact, is it not a fact that you don't know how these independent agents use this literature? You only know how your men use it?

[fol. 186] A. That is correct.

Q. Now, any claims that arise from sales by these independent agents, are they also handled through your office, or are they handled directly by or through the company?

A. They are handled through my office. Sometimes the agent will call my office, and then they are passed on to the claim department.

Q. Now, in securing prospects do you buy lists, prospects to whom to mail?

A. We have done that, yes.

Q. How else do you secure their names, the names of prospects that you mail literature to?

A. Get them out of the telephone book or criss-cross and such, and buy names as well.

Q. Then actually when you mail out the various pieces of literature which have been shown you by Mr. Langs, to prospects, you don't know what income bracket they are in, is that correct?

A. No, I do not.

Q. You don't know what they do?

A. That's correct.

Q. In other words, they are mailed out to members of the public?

A. That's right.

Q. And if one of these members of the public mails in a return card, such as was shown you, then you send an agent to see him?

A. That's right. That's right. But anybody that can't read, of course, doesn't send it in.

[fol. 187] Q. Mr. Witness, have you made any checks or do you know what percentage of sales are made from this advertising, from each mailing?

A. Percentage of sales?

Q. Of policies?

A. There has been as high as two per cent returned, and one per cent sold—or thereabouts.

Q. In other words, on that basis you would get about two returns out of each hundred you mailed out?

A. That is about right.

Q. And then would probably sell one of those two?

A. That's correct.

Q. Do you use any mailings for the other companies which you represent?

A. No, I do not.

Q. You said that eighty per cent of your business was life insurance, and twenty per cent was accident and health.

A. Accident and health, that's right.

Q. You don't use any mailings for the life?

A. Yes, I do.

Trial Examiner Hier: This eighty per cent, is that on the business written? Is that on premiums collected or the face of the policy, or what is it figured on?

The Witness: We figure it on commissions earned.

Trial Examiner Hier: Commissions earned?

The Witness: Yes.

[fol. 188] Q. (By Mr. Brookfield) Mr. Tolmich, you don't personally contact each applicant that files a claim, do you?

A. Of course not.

Q. So you don't know what the basis of the claim is? You pass it on to the company, is that correct?

A. That's correct. That is true in most instances. If there is any question it is usually brought to my attention because my name is the one that is really known among these people.

Q. Now, you stated that some companies require a medical examination for accident and health policies, is that correct?

A. That's right.

Q. Now, what companies?

A. What companies?

Q. Yes.

A. My life insurance company, the Continental Insurance Company, is one of them: and then there is a dozen others that I can't think of offhand that I know require examinations on some of their non-cancellable accident and health policies.

Q. The policies sold by National are not non-cancellable policies, are they?

A. That's correct.

Q. They can be cancelled by the company at the expiration of any policy year?

A. That's correct. Of course, the price is relatively less because of that.

[fol. 189] Trial Examiner Hier: Are there any accident and health companies that require medical examinations?

The Witness: No cancellable policies, no, that I know of.

Q. (By Mr. Brookfield) Then in that respect the National doesn't offer anymore than any other company, does it, in that respect?

A. In that respect they do not offer any more, except that it indicates that it is a cancellable policy; it differentiates between a cancellable and a non-cancellable, because of the examination.

Q. Well, aren't there any number of other competitive life insurance companies that sell the same policy without the so-called medical examination?

A. Yes.

Q. How about your Continental?

A. Continental Casualty? Yes, they write only cancellable insurance.

Q. The same as——

A. National.

Q. The same as National?

A. That's right. There are lots of companies that do. There are lots of companies that write only the other kind.

Q. Now, Mr. Tolmich, in testifying here today you have been testifying as an experienced insurance man of some thirty years.

A. That's correct.

Q. You don't know what the various terms, as set out in these policies and as set out in the advertising, too, means to the man in the street, do you?

[fol. 190] A. Nobody knows. All I have to go by is my experience, the reaction from the public.

Q. Is it not your reaction from the public that the public itself knows very little about insurance except the words "benefits" and "payments" and "costs"?

A. Would you mind repeating that exactly?

Mr. Brookfield: Mr. Reporter, will you read that back? I will repeat the question.

Trial Examiner Hier: Let him read the question.

(The reporter read the question as follows:

"Question: Is it not your reaction from the public that the public itself knows very little about insurance except the words 'benefits' and 'payments' and 'costs'?")

The Witness: In my experience I would say that the public is interested in the highlights of the benefits and the costs, which is all that this literature is intended to do, is get interest. It is not a representation of all the benefits nor all the exceptions.

Q. (By Mr. Brookfield) This advertising stresses the benefits a great deal more than it does the exceptions, don't it?

A. It doesn't stress all of the benefits either. It is only the exceptional benefits or the type of benefits that might get interest to a point where they will want to know more.

Q. Mr. Tolmich, did I understand you to say that you sell non-cancellable accident and health

[fol. 191] A. I do.

Q. For Continental?

A. Insurance.

Q. By itself, without selling any other policies?

A. That's correct.

Q. It doesn't have to be bought or purchased in connection with any other policy?

A. That's right.

Q. That is the type of policy that National does not sell?

A. That is correct.

Q. Now, Mr. Tolmich, in connection with the claims which you have handled, to your knowledge has the company turned down any claims because of pre-existing illnesses?

A. I believe they have, and in most instances they were out-and-out frauds.

Q. They wouldn't be people who misunderstood the policies they were buying?

A. They wouldn't——

Q. They weren't people who misunderstood the terms of the policy they were purchasing?

A. People do not misunderstand when they have ulterior motives, and quite often we find people hiding the facts from us.

Q. Are you intending to convey the idea that every person with a pre-existing illness who attempted to collect on an insurance policy from National through your office was doing so with fraudulent intent?

[fol. 192] A. Quite often people do things without intent that are not honest. Some of these people just either forget to tell you that they have just had an operation, and the doctor didn't tell them that it was cancer, and we don't know about it, and three months later they make a claim.

Q. Have you had people file for—strike that.

Q. (By Mr. King) Mr. Tolmich, referring to these people who, as you put it, non-intentionally filed claims as, for example, treatment, reimbursement for treatment for cancer or hospitalization, have any of those persons ever given you a reason why they filed the claim?

A. No, they don't explain those things.

Q. Haven't they told you, as a fact, Mr. Tolmich, they told you they believed they were covered for hospitalization?

A. No, they did not. They knew that they can't buy, for illustration, fire insurance on a house that was burned last month.

Q. If they knew it why did they file the claim?

A. Well, it would take me too long to really tell you all of the facts, but I can assure you that it is mighty nice to say that only a few of them do that, but there are some of them that will make claims that are ridiculous, and will insist on it, and I have had this come up time and time again, and later admit that they were wrong.

Q. Mr. Tolmich, have you ever had an occurrence in your office where a person has filed a claim for a disease such as cancer, of which they had no knowledge at the time they took out the policy?

A. Have I had—I merely use that as an illustration, but lots of people have had different types of sickness.

[fol. 193] Have you ever had a person file a claim for

any type of sickness pre-existing the effective policy date, which, to your knowledge, that person did not know about it at the time he filed application for the policy?

A. I wouldn't know that.

Q. Have you ever had any correspondence on such a claim or question?

A. Where the claimant had no knowledge of it?

Q. That is correct, sir.

A. No.

Q. You have never received a letter of inquiry from any person in regard to a pre-existing claim? I mean a pre-existing cause of illness prior to the effective policy date, which that person requested reimbursement for hospitalization claim, in which the company refused, because it was a pre-existing cause?

A. Yes, I have had lots of situations of that sort in the past seventeen years, where there was a pre-existing claim that wasn't paid.

Q. It was not paid. Well, then, under those circumstances can you tell me why such persons file those claims?

A. Yes.

Q. Tell us.

A. I will recall one at this time who made a claim and our company said it was pre-existing. He came back to me and he insisted it wasn't so. I went up with him to the claim department. They said, "All right, we will check again". We checked again. This was three times that I went back to the Home Office. This man insisted that it [fol. 194] was not pre-existing. The fourth time, when it was denied, he admitted to me that it was pre-existing. I have many such similar cases.

Q. Now, have you ever had a person in such a situation say to you or write to you that it was his information and belief when he applied for and received the policy that he was covered for sickness, period, and that he had no knowledge of the conditions of the policy that pre-existing causes were not covered in the policy?

A. I don't recall any such claim.

Q. You don't recall any correspondence of such a nature?

A. No, I do not.

Q. You don't recall any inquiry for—any inquiry from any of the thousands of persons to whom you have sold policies?

A. That they thought they were covered on a pre-existing condition, no, sir.

Q. You maintain correspondence files on persons who have policies which have been purchased through your office, who write to you?

A. I do have some.

Q. Where do you store those files?

A. In my office.

Q. Where is your office located?

A. On James Couzens.

Q. At what address?

A. 18604.

Q. Now, Mr. Tolmich, will you tell me in comparison, the number of National Casualty accident, health and hos- [fol. 195] pitalization policies you sell? What is the comparative figure between that and the A and H non-cancellable policies you sell for the Continental Insurance Company?

A. Oh, I have very little with Continental Insurance. It is only a matter of two or three years that I have been writing—that Continental has been writing it.

Q. Can you give me an estimate for the year 1955, sir?

A. Oh, fifteen or twenty.

Q. And what would be your estimate of the number of National Casualty policies you have written?

A. Oh, hundreds.

Q. Hundreds?

A. Yes.

Q. And you would say, sir, would you not, that based on that figure and your experience in the selling of A and H insurance that a very minute portion or a very small percentage of policies sold are non-cancellable A and H policies?

A. That is correct.

Q. Now, isn't it true that the non-cancellable policies have higher rates?

A. That is correct?

Q. Could you give us an estimate as to the differentiation?

A. Probably double the other.

Q. Probably double. Mr. Tolmich, I show you Commission Exhibit 13 (b), and ask you whether you are familiar with that circular?

A. Yes, I am.

[fol. 196] Q. And you use this in sales policies?

A. Similar.

Q. Now, looking it over, sir, you will note on the back it states, "No medical examination required." Is that correct?

A. Right.

Q. Now, I ask you, in looking over this, you see any place on there where it states that the National—strike that. Can you tell me what policy this exhibit applies to?

A. Well, apparently it is a medical-care policy.

Q. What policy is that?

A. Home and hospital and medical expense policy.

Q. Now, I ask you, sir, is that policy cancellable or non-cancellable?

A. It is cancellable.

Q. Under what condition?

A. Well, I don't know the exact provision; whether it means that they can refuse to renew it or whether it expires on age sixty-nine, or whatever the age is. I don't have it exactly.

Q. I now show you Commission Exhibit 13 (a), and ask you what it states on the front thereof?

A. "This policy is cancellable."

Q. "This policy is cancellable." Now, isn't it a fact that any of the National Casualty Company's policies may be cancelled by the company at the end of any premium term?

A. That is correct.

Q. Now, sir, do you consider that an important feature [fol. 197] of the policy? An important exclusion?

A. Yes, I do.

Q. Now, sir, I show you again Commission Exhibit 13, and I ask you if you see anyv here on that circular any statement to which it refers, the home and hospital medical expense policy is cancellable by the company?

A. It doesn't say so.

Q. Now, you tell me, sir, that the reason that "no medical examination required" is put on that circular is to contrast is between cancellable and non-cancellable policies. Now, why is it when this ad refers to a cancellable policy, and great pains are taken to show it is not a non-cancellable policy by an indirect method, by saying "no medical examination required" at the end, it does not say "renewable or cancellable at the option of the Company only?"

Mr. Langs: Now just a minute. Counsel is putting in here a comment by indirection or implication. Counsel can put any argument he wants in, but his cross examination can only be upon those items which are facts in this case, and he can't use something as a conclusion, which is the function of the Court in the cross examination. There is no such thing in this, and I very strenuously object to the use of this language in the question.

Trial Examiner Hier: I am not going to be misled by the way it was drawn. We will draw our own inferences. Answer the question.

The Witness: I don't remember exactly what your question is, but let me talk.

[fol. 198] Mr. King: All right.

Trial Examiner Hier: You want it read back?

The Witness: No, no. The purpose of that literature is to gain interest, and not to represent its coverages, which is being done when the policy is explained. This is merely to gain interest, eliminate people who are not interested or who do not come in the category of that type of a policy, and so what is put in or what is left out is not material because it is not used for explaining the policy. It is used for getting interest only, and we do not put in there all of the coverages, either, because there are only the features.

Trial Examiner Hier: The interest you seek to stimulate, Mr. Tolmich, is the interest in being covered against accident and ill health?

The Witness: That's right.

Trial Examiner Hier: When you say it is not put in there to describe the coverages I don't follow you. It is put in there to stimulate interest in coverage.

The Witness: That's right.

Trial Examiner Hier: And the breadth thereof. I don't understand the distinction which you make. Now, if you are making this point, it is used to stimulate interest in coverage, and then subsequently when the agent explains it to the man, he corrects any misapprehension this may have created, that's one thing, but I don't follow the other statement.

The Witness: That's what I mean. I don't know about any misapprehension.

[fol. 199] Trial Examiner Hier: I am not assuming—or I am just assuming there is.

The Witness: What it says there is true. It needs supplementing with the fact that there are other features that are not played up, and we finish that up with, for instance, we don't mention all of the coverages. We finish that up. We don't mention all of the exceptions. We finish that up.

Trial Examiner Hier: Go on. Tell me this before he starts on you again. Based on your experience, supposing you put everything in this ad—I don't mean everything that is in the policy—but suppose you put in exclusions and the fact it is cancellable and this, that and the other thing, and medical examinations are required under certain circumstances. Would business increase considerably or not?

The Witness: Most of the people wouldn't read it because it is too much. That's the main reason for eliminating the mechanics. Most people probably wouldn't understand if you went into the technicalities.

Trial Examiner Hier: Go on.

Q. (By Mr. King) I again show you Commission's Exhibit 13 (b), and ask you if you see on that advertisement any exclusions?

A. As I mentioned, it doesn't have all of the features, bad and good.

Q. Does it have any of the bad features?

A. Well, there is only one bad feature that is required in all policies; the things that we do not pay for; and that is true in an expensive non-cancellable policy, and I don't believe even that policy has the exclusions.

Q. Looking at the advertisement, sir, could you tell me [fol. 200] any of the benefits which are not mentioned in the ad?

A. Yes, I think so.

Q. Would you tell me one, sir?

A. Well, we have double indemnity features for certain sicknesses or accidents. We cover, in traveling in other countries—I don't know. There are lots of things, if I took the policy, that I could point out to you.

Q. Now, isn't it a fact, sir, that this statement, "No medical examination required", conveys no distinction between a cancellable and a non-cancellable policy?

A. Well, I don't know what conclusion you draw from it, but in our business it is automatically understood that medical is required in cancellable and non-cancellable, or the other way.

Q. You think there is any confusion in the minds of the public on that point?

A. Well, I can only answer it from my experience.

Q. Yes, sir.

A. And I honestly, truthfully, tell you that I have yet to have anyone come to me and complain about any of this advertising.

Q. That wasn't the question. The question is whether, in your experience, you believe the public is confused on the point of the requirements of medical examinations.

Mr. Langs: I think the witness has answered it.

Trial Examiner Hier: He may answer.

The Witness: Yes, I can answer. No.

Mr. King: Thank you.

[fol. 201] Trial Examiner Hier: Obviously that is what he would say, or he would do something about it.

The Witness: I can only say what I know or think.

Q. (By Mr. King) Now, Mr. Witness, earlier you testified that certain specimen policies are distributed by the hundreds to prospective insureds at the time of sales.

A. I never said that.

Q. What did you say in that regard?

A. I said that eac agent has a specimen policy.

Q. Which he carries with him?

A. That is correct.

Q. Which he shows to the prospective insured?

A. That's right.

Q. What is the size of that policy? Is it the standard size?

A. No. We usually have a small specimen policy, as a rule. In some cases we don't have specimen policies that are cut down, so we use the big one, the regular one.

Q. Can you tell me what National Casualty supplies to you? Are they the smaller or the same size as the regular policy?

A. I really don't remember what kind we have. I have seen both.

Q. You have seen both?

A. Yes.

Q. You don't know what size or kind your agents are carrying now, do you?

A. Usually the small.

[fol. 202] How much smaller than the regular size policy that is actually issued?

A. I wouldn't know.

Q. Would you say it is fifty per cent smaller?

A. Approximately.

Q. Approximately fifty per cent. Now, Mr. Witness, you testified with reference to certain ads the latter part of this morning's testimony, that you were familiar with them, and the statements contained therein have been used by National Casualty Company in its advertising over a period of years, is that correct?

A. That's correct.

Q. I noted in the beginning portion of your testimony there was no direct statement made as to such with regard to the first ad you testified on, and in that connection I show you a copy of the complaint from which the quotations read to you were taken, and I ask you, in Sub paragraph 1 of paragraph 3 of the quotation, "For individuals or family groups, ages 1 day to sixty-nine years". Has that been used for a number of years by the company?

A. I don't recall just when we changed from one to sixty-nine. I think it used to be sixty-five, if I am not mistaken.

Q. But either one or the other has been used for a number of years?

A. Yes.

Q. Now, the statement, "No medical examination required". Has that or similar language been used?

[fol. 203] I believe so.

Q. For a number of years?

A. That is correct.

Q. Now, the statement, "Monthly benefits up to three hundred dollars per month paid from first day of any sickness or accident", has that been used?

A. Yes.

Q. I see, sir. Now, I ask you how you construe, based on your knowledge of the company's policies, the word "any" in that quotation.

A. My personal opinion is not important, except my experiences with the public.

Q. I am asking you for your opinion. How you construe that word "any".

A. As a salesman?

Q. No, sir; as a man who is a general agent for National Casualty Company, and as an expert.

A. I am not an expert on languages.

Trial Examiner Hier: What does that mean to you?

The Witness: I will be glad to tell you my reaction.

Q. (By Mr. King) All right, go right ahead.

A. "Monthly benefits up to three hundred dollars a month paid from the first day of any sickness or accident." Oh, yes, sure. We are referring to a specific policy in accordance with the exclusions and provisions, and that's what "any sickness or accident" refers to.

Q. In other words, you say "any sickness or accident" [fol. 204] refers to any sickness or accident covered by the policy?

A. When we are talking about a specific policy then we are talking about the coverage as provided by the policy.

Q. Now, I take you down to the next quotation. "Hospital room and board for one hundred days for each sickness or accident."

Now, I ask you, sir, how you would construe the word "each".

A. If I would—If I were talking about the policy, I would say "each sickness covered by the policy".

Q. Now, I take you down to the next quotation, which says, "Fifteen dollars per day for hospital room and board for one hundred days, each disability," and I ask you if you construe "each" in that sentence in the same manner?

A. Yes, I do.

Q. All right, I take you to the next quotation. "Surgical Operations, whether performed in or out of the hospital, are paid up to three hundred dollars in addition to hospital benefits," and I ask you, in your construction of the words "up to three hundred dollars", whether that means to you that they will pay the bill for any surgical operation up to three hundred dollars or whether they will pay the bill for surgical operations up to three hundred dollars in accordance with the schedule given in the policy?

A. The latter.

Q. That latter. Now, going down to sub paragraph 5, paragraph 3, I show you a quotation that reads, "Monthly income up to three hundred dollars for total disability from sickness paid from first day for two years". Now, [fol. 205] what is your interpretation of this word that is capitalized and underlined, to wit, "First Day"? What does that mean?

A. I am speaking of a policy, I become all-conscious of the provisions, and it means just that.

Q. In other words, it would not necessarily mean then, to you, the first day, say, I would take out that policy today and I was to have a hernia operation that disabled me for life tomorrow—that would not necessarily mean that to you, would it?

A. If you would buy a policy from me you would hear such a statement as this; "this covers from the first day of accident and the thirty-first day of sickness, in accordance with the provisions of the policy". That's what you would hear.

Q. I see. Now, I ask you, sir, again to look at that sentence, and you don't see the words you have just stated there, do you? You just see "From first day for two years with no confinement required at any time". Is that what you see?

A. Wait a minute. Where?

Q. Here.

A. That's correct.

Q. Did I quote the sentence correctly?

A. Yes.

Q. Thank you.

Mr. King: No further questions.

Redirect examination.

By Mr. Langs:

[fol. 206] Q. Mr. Tolmich, just a couple of questions. Both counsel have asked you on cross examination concerning your opinion on the public's reaction to these items of advertising which have been distributed.

Now, for the purpose of—so that I understand it and the record is clear on it—I think you made the observation that all you know is your experience, and by "experience" you mean what?

A. Dealing with the public who buy these policies.

Q. What complaints the public raise to you?

A. That's right.

Q. What they say about it to you?

A. That's right.

Q. So that it comes back to this situation, and is this a fair statement: That when you answered my questions on direct examination as to whether or not any person to whom you sold a policy had complained to you that they were misled by this advertising material, and you said that you had never received any such complaint—that is an experience and a reaction which you received from the public, is that correct?

A. That's correct. I believe I did not fully explain, when you asked me whether that first impression of the advertisement was the one that was lasting. As a matter of fact, after thinking about it, at no time was there any reference made to the advertisement after the policy is sold, because nobody remembers the original interest-getting piece of literature. They remember what is told them in the policy.

Q. What the salesman tells them about the things that it covers and the things that are excluded?

[fol. 207] A. That's right.

Q. Now, you also mentioned, with reference to Exhibit 12 (b), that this piece of material—application—what the agents who are not housed by you—receive when they want to sell insurance which National carries, and some other company doesn't carry.

A. Right.

Q. And I show you this Exhibit 12 (b), and refer you to the—first of all, how many pages does it contain?

A. Four.

Q. And on pages three and four you find what?

A. The application and the rate sheet.

Q. And the application and rate sheet is the thing which the people are primarily interested in? The agent, I mean?

A. That is part of the contract.

Q. The agent, that is what he wants in order to have this policy issued?

A. That's right.

Q. He wants the application form, and he wants to know what the rates are that he must quote.

A. Yes.

Q. And that is on pages three and four?

A. That is correct.

Q. Now, there were several questions asked, Mr. Tolmich, by both counsel, concerning the advertising literature, as to whether or not it contained all of the points—strike that. All of the points covered by the policy, and all of the points [fol. 208] excluded, and you indicated that all of the points excluded were not covered, and all of the points included were not covered?

A. That is correct.

Q. That it was only the highlight features. Now, isn't it true, Mr. Tolmich, that many of these points have not been covered in the advertising literature for the simple reason that the points which have been highlighted represent the differences or the things which makes this policy of National different than some other company? The difference?

Mr. Brookfield: I object to that question.

Trial Examiner Hier: What?

Mr. Brookfield: I object to that question.

Trial Examiner Hier: It is leading. Sustained.

Mr. Langs: Let me rephrase the question a little bit.

Q. (By Mr. Langs) Is it true the statements contained in the advertising material, which questions were asked of you on cross examination, represent highlights in the policy issued by National Casualty?

A. That's true.

Mr. Brookfield: Same objection. It is just as much leading.

Trial Examiner Hier: Sustained. It is still leading. The question is what does it represent.

The Witness: What does the circular represent?

Trial Examiner Hier: What do these points that are stressed—what do they represent?

[fol. 209] The Witness: As far as I know, in most instances they are things that other companies may or may not have.

Trial Examiner Hier: That leaves me in the dark—may or may not.

The Witness: There are some companies who have some of these, and others—they don't all have everything necessarily that we have. I am really not an actuary, to know what all of the other companies have.

Q. (By Mr. Langs) Mr. Tolmich, when you say that they may have, I believe you explained on direct examination that as to benefits some companies may have more than others?

A. That's right.

Q. One will advertise fifteen dollars a day, one will advertise ten, and one will advertise twenty dollars a day?

A. That's right.

Q. Those are differences as to amounts. They are still benefits, but differences as to amounts, is that correct?

A. That is correct.

Q. So that when National sets forth in literature certain statements about benefits, that is done for the purpose of what?

A. To show what National offers as compared to what others offer.

Q. When——

Trial Examiner Hier: I don't get the last part of that, "as compared to what others offer." All it shows is what National offers, isn't it? You would have to go on and look at the other companies' ads to see what they offer?

[fol. 210] The Witness: Yes, there are so many of them that send out circulars that we feel what we have in ours may attract an interest in them enough to return the card.

Trial Examiner Hier: There is no basis for comparison in the ads themselves?

The Witness: No.

Trial Examiner Hier? You stress what you offer?

The Witness: That's right.

Q. (By Mr. Langs) However, you just indicated, Mr. Tolmich, as I recall now—I want to get this correct—that other companies send out literature, too?

A. That's correct.

Q. So that if one man gets literature from two or three companies, one of which is National Casualty, he has an opportunity to see which one he thinks he would like to call?

A. That's right.

Q. So to that extent there is a comparison?

A. That's correct.

Mr. Brookfield: Mr. Examiner, I move that question and answer both be stricken. That is purely a supposition.

Trial Examiner Hier: I can make it without the answer. I think anybody could make that. If I have got a lot of stuff before me I can compare. There is nothing new about that. I will leave it in. The opposite point is true, too. If I don't [fol. 211] have it, I can't compare it without going and getting it.

Q. (By Mr. Langs) Do you know, Mr. Tolmich of any company that writes cancellable insurance. A and H insurance, that covers pre-existing illness? That includes or pays claims on pre-existing illness?

A. No, I do not.

Trial Examiner Hier: Was that cancellable or not cancellable?

Mr. Langs: Cancellable.

Q. (By Mr. Langs) Would there be any point in including highlights in advertising, points which are the same so far as all companies are concerned, so far as benefits and claims are concerned?

A. Then it becomes repetition, and it doesn't serve our purpose of getting interest.

Trial Examiner Hier: Nor does it serve the purpose of getting the business in your company?

The Witness: That's right.

Trial Examiner Hier: There isn't any sense in advertising the other fellow's business?

The Witness: Of course.

Q. (By Mr. Langs) Mr. Tolmich, isn't it true, as a salesman, you attempt to sell those points which you feel are better or different than your competitors? You are not selling the same product as your competitors, isn't that true? You highlight your better points?

A. Only to get interest.

Q. That's what I mean.

[fol. 212] A. As far as selling is concerned, we sell primarily the need for the coverage, and then offer a solution through the coverage, but to highlight, we merely do it to get interest, and in that way we can have prospects.

Q. Now, on one other item. On this question of specimen policies, you were a little bit in doubt on that as to the exact size of those policies, whether they were large or small, so far as National is concerned.

A. Yes.

Q. If I would indicate to you that as a matter of fact, although National has both large and small policies, so far as the specimen is concerned, that they do not provide specimen policies except in the same size as the original.

A. That is possible.

Q. Would you say I was wrong on that?

A. No.

Mr. Brookfield: Object to that question. That is another leading question.

Trial Examiner Hier: Sustained.

Mr. Langs: Your Honor, it is simply clarification of something which he was in doubt about at the time.

The Witness: I probably made the statement when I was thinking of Continental having specimen policies.

Trial Examiner Hier: What is the fact?

The Witness: Obviously National doesn't have smaller size policies, specimen policies.

Mr. Langs: The specimen policies which we will bring [fol. 213] out through other witness, officers of the company, are exactly the *the* same size policies.

Trial Examiner Hier: They are? Apparently the witness wasn't sure about it.

Mr. Langs: He indicated he was not sure as to the situation, and I was simply bringing out a clarification of the point. No further examination.

Trial Examiner Hier: Anything more from you?

Recross-examination.

By Mr. Brookfield:

Q. Mr. Witness, you were shown Commission's Exhibit 12 (b), which was an application for one of the policies of National that you distribute to your dealers or your sub agents.

A. Yes.

Q. You also distribute plain applications that don't have any literature on them at all?

A. To the brokers who are not familiar with the coverage I usually send one of those for their information, and then if they need more we send them plain applications.

Q. And that is true of all National policies which you sell that way?

A. Yes.

Q. Mr. Witness, is it not a fact that the purpose of mailing all of this literature is to arouse the recipient, a member [fol. 214] of the public's interest in purchasing insurance from your company, rather than engaging in a popularity contest with some other company?

A. The purpose is for them to return our return card.

Q. So that you can contact them

A. And tell them the facts about the policy.

Q. And sell them a policy?

A. Of course.

[fol. 215] Peter G. Korn resumed the stand and testified further as follows:

Direct examination (continued)

By Mr. Langs:

Q. Now, if we can find where we were, Mr. Korn——

Trial Examiner Hier: I think you had finished this medical examination.

Mr. Langs: No, we hadn't finished with that.

Trial Examiner Hier: I don't know where you left off.

Q. (By Mr. Langs) I think we covered, Mr. Korn, this "peace of mind and security for life"? Didn't we cover that? I will show you Commission's Exhibit 6(i). Do you recall that as the last one we talked about?

A. That was the last exhibit we spoke about.

Q. This contains a statement, "I understand this peace of mind and security will be mine from the first day, even for life." In your experience, personally, have you received any complaint from any insureds that they were misled in purchasing a policy from National by virtue of that language?

A. No, sir.

Q. And did any information reach you as administrator of National Casualty Company through the several departments that any complaint had ever come to them from any insured that he or she felt they were misled in purchasing the policy from National by virtue of this language?

A. No, sir.

[fol. 216] Q. This language has been used in the A and H business of National for how many years?

A. I cannot say exactly how many years, but in respect to the specific policy to which it applied, my best judgment, possibly the last five or six or seven years that we wrote that type of coverage.

Q. It is a matter of several years that this has been used?

A. That is correct.

Q. Now, the next one that has been set forth in the complaint by the Federal Trade Commission is a statement, "No medical examination required." Now, will you, out of your experience and knowledge, will you give to us a little historic evolution as to the use of this term "No medical examination required", as it applies to A and H business?

A. It has been more or less common knowledge that medical examinations were required in connection with life insurance. Accident and health insurance is much younger than life insurance. Years ago—some twenty or twenty-five years ago—it was difficult to sell accident and health insurance. People weren't conscious of its need. They used various excuses when they hesitated buying it because of the

fact they feared it might require a medical examination. That was one reason why the companies adopted the phraseology in their advertising to simplify the sale by "no medical examination required", the agent takes the physical history, whereas in life insurance the examining doctor usually took that information. To some degree—I don't know how much—there has been in the insurance industry some differentiation between non-cancellable insurance or non-terminable insurance accepted at the end, to which [fol. 217] the premium was paid. There has been that distinction. I think it has been merely primarily, let us say, to convey to the people that you could get this insurance without going through a lot of red tape.

Q. How many years has this statement, "No medical examination required", been used by the A and H business?

A. I would say all of twenty years, or more.

Q. And to your knowledge how many years has National used this statement in their literature?

A. Since I have been with the National, and that is fourteen years.

Q. Were they using it at the time you came?

A. Yes, I believe so.

Q. Now, ——

Trial Examiner Hier: Mr. Korn, don't you think, as an insurance man, though, it is a rather unfair burden on a prospective insuree, insured, to disclose to you latent conditions of which he, as a layman, may not be aware? In other words, as to personal terms, I would hate like the dickens to pay premiums a number of years when I had stated in an application that I didn't have cancer, and had it. Even physicians can't discover cancer sometimes, and it seems to me the average layman doesn't know whether he has it or hasn't got it, and when you take no physical examination you put the burden, it seems to me, on the fellow who is least qualified to know what he has got and what he hasn't got.

The Witness: That may be, shall we say, a premise that you think, but bear in mind that in an examination, even [fol. 218] for life insurance, it would not disclose cancer necessarily, and many other conditions that existed, which

would require an X-ray examination, chest examination of various natures.

Trial Examiner Hier: There the company is bound, isn't it?

The Witness: Not necessarily, if there is a misrepresentation. You are inferring a man may not tell because he is too modest. Women are too modest to tell about female troubles.

Trial Examiner Hier: That's another problem.

The Witness: I can go as far as you want.

Trial Examiner Hier: You can't represent what you don't know.

The Witness: That's true, but we say, "To the best of your knowledge".

Trial Examiner Hier: Is that what the application says—"To the best of your knowledge"?

The Witness: That is what we are using, but it is not a burden on the man to produce evidence of his insurability.

Trial Examiner Hier: The burden is on the man to submit what he knows, not what he suspects, or anything of that sort.

The Witness: That is right.

Trial Examiner Hier: I just wanted to get your reaction.

Q. (By Mr. Langs) Mr. Korn, I show you an application entitled Commission's Exhibit 12(b), and ask you to read [fol. 219] the answer to the question about what the application states, as to pre-existing conditions or knowledge of any illness.

A. There are several question, but the pertinent ones—"To the best of your knowledge or information are you and the members above listed now in good health and free from physical impairment or deformity?" And the next question, "To the best of your knowledge or information have you or any members above listed had"—and listing various things. We can't expect anyone to tell us what they don't know.

Trial Examiner Hier: 'You or any members of your family" to raise the suspicion of the medical examiners of your company?

The Witness: No, this happens to be a policy where they are insuring other members of the family, and the application encompasses the health of the entire family.

Trial Examiner Hier: Off the record a minute.

(Discussion off the record.)

Trial Examiner Hier: Back on the record.

Q. (By Mr. Langs) Mr. Korn,——

Mr. Langs: Just a minute. Mr. Hier, you heard Mr. Korn read the specific questions. Does that take care of your specific question?

Trial Examiner Hier: Yes, that's what I asked him.

Q. (By Mr. Langs) Mr. Korn, the Examiner mentioned a moment ago about putting the burden upon the insured. Actually, from the standpoint of the allowance or disallowance of the claim—and I think this is already in the record, has been testified to. I don't know as Mr. Korn testified [fol. 220] to it, but the claim man did on the cross examination on the Government's case—that the burden was on the company to establish that such an illness or pre-existing condition actually existed at that time, or was outside of the incontestable feature of the policy with reference to illness. Am I correct in my recollection of that?

A. I don't quite get the point you are trying to convey. You speak of the burden of proof?,

Q. If a claim comes in—a policy is issued, and thereafter a claim comes in, where it appears that the man may have had a pre-existing illness——

A. Yes.

Q. —and he did not have actual knowledge, we will say—it is one of the cases where he just didn't know, but actually a pre-existing illness may have existed. As I recall the direct testimony of the testimony of the Government's case, which was put in by a claim man for National, if the company could not establish the pre-existing illness definitely the claim was paid. If it was a valid situation, that was something else. Is my recollection correct on the testimony?

Trial Examiner Hier: I don't know; I don't remember, it has been so long.

The Witness: It has been the practice of our company that, I believe, not knowing entirely, but it is the practice of all companies, it would be very difficult to defend any rejection of a claim unless you had substantial evidence showing that it was beyond the scope of the policy provision, it wasn't covered because of a pre-existing situation. That [fol. 221] leaves Mr. Hier's remark, regarding the application, we say "To the best of your knowledge", and if the insured made a correct statement, no evidence he didn't make a correct statement, I don't think the company—or at least to my knowledge the company would not reject the claim on that.

Q. (By Mr. Langs) That was my understanding of the testimony, the testimony put in before, that the company did not reject claims because of that. Now, on this statement of "no medical examination required", has any insured or person who has purchased a National Casualty policy, come to you and indicated that in purchasing the National Casualty policy they were misled by this statement, "No medical examination required"?

A. Not to my knowledge.

Q. Have they ever come to you—has it ever come to you through the channels of the different departments of the company that an insured who has purchased a policy from National has complained to the company that they were misled in buying the policy by virtue of the statement?

A. Not to my knowledge.

Q. In your experience have you had any—at any time in the thirty-three years, or thirty-one years, that you have been in the business—has anyone come to you and stated that they were misled by virtue of this statement having been used in the circular, in the purchase of A and H policies?

A. Still referring to that statement "No medical——"?

Q. The same statement. That's right.

A. No.

[fol. 222] Now, this statement, "No medical examination required", so far as a person who comes in and wants to buy insurance, and he qualifies as to age and so forth, is that a true statement? You either do or do not require

a medical examination for the purpose of the issuance of the policy? Is it a true statement?

A. The company does not require an examination. May I elaborate on the point?

Q. Yes.

A. If the insured still desires a policy and wishes to go to his own doctor and submit additional medical evidence, that is his own choice. We do not require it, but he has that privilege.

Q. That would be in the event the information he submits would lead you to believe you did not want to take the risk based on the application alone?

A. That is correct.

Q. Then if you declined it and he wanted to furnish additional information he could do it?

A. Yes.

Trial Examiner Hier: Let's get this straightened out. No medical examination is required prior to issuance.

The Witness: Yes.

Trial Examiner Hier: But a medical examination may be required prior to payment of claim?

The Witness: No. We reserve the right to examine to determine the extent of the claim. That's in your stand-[fol. 223] ard provisions. We have no control over that. That's your state regulatory provisions in practically all of the states.

Trial Examiner Hier: You mean that is required by the State?

The Witness: That is right. You have an option in there, but you have a standard or optional provision.

Trial Examiner Hier: But you can't put it in or leave it out?

The Witness: I think that is the requirement. I am not certain. There are some options, but the text of it—you have to follow the text.

Trial Examiner Hier: I understand the text can't be varied, but you don't have to put that provision in the policy if you don't want it.

The Witness: It would have no reflection on the charge, whether it is in or out.

Q. (By Mr. Langs) Mr. Korn, I refer you to Commission's Exhibit 12(a), a policy which has on the back of it, the last sheet, what is called standard provisions, and I refer you to standard provision number eight. Would that help you in answering the question of the Examiner?

A. Only to this extent: As long as I have been with the National, and from my experience, the companies have always included that question. It may be an optional provision as a state requirement.

Q. What does this heading of so-called standard provisions in the policies mean? Is that standard in all companies or standard with National?

[fol. 224] A. In 1911 or '12 through, I believe,—that is before my time—the National Association of Insurance Commissioners or a comparable body of State regulatory officials designed the so-called standard provisions. All of the states did not pass laws incorporating such a set of provisions in their statutes, but the states that did that, passed an act incorporating said provisions, did accept policies with the provisions in them and approved the policies. That has been the practice until, I would assume, 1950, I believe, and again through the efforts of the National Association of Insurance Commissioners and the industry they now have developed what we call the uniform provision act, which supplements the standard provision, and as I understand, there are some thirty-odd states that have now approved it. Each year they are added, and there is possibly forty states that have the uniform provision, which will be a requirement in all policies.

Trial Examiner Hier: I don't think that language is too clear in this respect. Do you mean by that, that that provision must be in any A and H policy, or do you mean that if the company elects to have a provision of that nature in there they must use that particular language?

The Witness: I can't answer your question because I do not know. There are a certain number of those provisions that are no election. They must be in. There are about six or a half a dozen of them that are optional provisions, and you can put those in if you so choose.

Trial Examiner Hier: But if you do use those you have to use that language?

[fol. 225] The Witness: That is correct. Some of them are not required, but I do not know all of the options.

Mr. Langs: We can check that bit of law and make that available.

The Witness: If you phone the office you can get it.

Q. (By Mr. Langs) Do you know of any non-cancellable insurance policies that do not provide for or do not have this provision included in it, "No medical examination required"?

A. You have two "nos".

Trial Examiner Hier: Yes, you have got a couple of negatives there. Do you know of any that do have?

The Witness: That do not require physical examination?

Trial Examiner Hier: That's correct.

The Witness: No, I do not know of any that do not require a physical examination.

Trial Examiner Hier: In other words, if the policy is non-cancellable the prospect must take a physical examination?

The Witness: Yes, to my knowledge.

Q. (By Mr. Langs) And if the policy is cancellable, no medical examination is required?

A. I can think of one exception. There are some companies I believe now that issue a non-cancellable accident-only policy that will accept the risk on the basis of an application, I am quite certain, without medical.

Trial Examiner Hier: That is accident only?

[fol. 226] The Witness: Accident only. No health question involved.

Q. (By Mr. Langs) We are talking about A and H, accident and health, both.

A. Yes.

Q. Now, we go on to the next statement which has been set forth in the complaint, and I refer you to Commission's Exhibit 6(j), and I ask you to note the language there that has been circled, and you will find there the statement, "The most complete coverage at the lowest rates. Monthly benefits up to three hundred dollars per month paid from first day of any sickness or accident plus

three hundred dollars per month of hospitalization". Are you familiar with that statement?

A. Yes. What the statement purports, I am.

Q. That's what I mean. You are familiar with that statement being used in advertising literature which is distributed by National Casualty?

A. That's correct.

Q. And do you know for approximately how long a period of time that language, exact language or language similar to that—the figures may be changed or words, slightly—has been used by National in the literature which has been distributed in connection with the policy?

A. You have two sections here.

Q. Talking about the one I read.

A. You read both, which one? I would like to make a comment about both.

[fol. 227] Q. All right.

A. "The most complete coverage at the lowest rates." Such an expression is to be used, maybe not the exact terminology, but it has been used for some time, expressing the coverage at presumably the most favorable rates.

The second one is more generally used. It has been used, I assume, as long as I can recall, when you speak of monthly indemnity. It merely purports to state what amount of monthly indemnity is available, and under what conditions is it paid, from the first day of any sickness or accident.

Q. And that has been used for many years?

A. In various forms, depending on the particular policy to which it is applicable.

Q. Now, during all of this period of time have you ever had an insured come to you who purchased a National Casualty policy, and indicated that he or she was misled in the purchase of that policy by virtue of the language which has been quoted here, or language similar to that?

A. No, sir.

Q. Have you received any complaints through any of your department heads to you as the administrative head that an insured has complained to the company that they were misled, he or she, in the purchase of a policy by virtue of this language?

A. No, sir.

Q. I show you Exhibit 15(e), Commission's Exhibit 15(e), and Commission's Exhibit 18(g), and you will notice [fol. 228] certain language set forth there, and you will find it reading as follows: "Hospital room and board for one hundred days for each sickness or accident. Your choice of plans paying from five dollars to twelve fifty per day. Pays full benefit even if your hospital room costs less." Are you familiar with that language or similar language?

A. Yes, sir.

Q. Has that language been used in literature which has been distributed by the National Casualty Company?

A. That's correct.

Q. And over what period of time?

A. The amounts may vary, the period may vary. It depends upon the specific policy to which it is applied, but the same phraseology, modified somewhat, has been used as long as we have been selling hospitalization insurance.

Q. During this period of time has any insured come to you and informed you that they were misled in the purchase of a National Casualty policy because of or by virtue of this language?

A. No, sir.

Q. Has any information come to you, as the administrative head of the company?

A. No.

Q. Through any of your departments, that some person had purchased a National Casualty policy and claimed or contended they were misled in the purchase of that policy by use of this language?

A. No, sir.

[fol. 229] Q. I show you Commission's Exhibits 15(f) and 18(d), and ask you if you will note the material which has been read, and you will find there this language:

"Fifteen dollars per day" in a box. "For hospital room and board for one hundred days, each disability." Are you familiar with that information?

A. Yes, sir.

Q. Has that language been used or language of similar purport, in advertising, by National Casualty Company in the distribution of literature?

A. Yes, sir.

Q. And over what period of time?

A. Speaking of this particular one, or the same phraseology?

Q. The same phraseology, or, where the figures might change, one of similar purport.

A. If it refers to a specific policy, that I do not know, but the essence of the phraseology has been used for many years in connection with hospitalization insurance.

Q. Now, in there there is an amount per day and there is a number of days. Over the period of years has the benefits varied or changed in that type of policy?

A. That's correct, it has.

Q. From the beginning there have been changes?

A. Yes.

Q. So that years ago instead of being fifteen dollars per [fol. 230] day it might have been ten dollars a day, or something like that?

A. Farther back than ten years ago we only sold five dollars a day.

Q. Now, has anyone, during the period of time that this language has been used, come to you and indicated to you that they were misled, he or she were misled, in the purchase of a policy from National Casualty Company by virtue of this language

A. No, sir.

Q. Have you received any information, as the administrative head, through your departments, that any complaint by an insured has come to you, through them to you, that an insured has said, "I was misled in the purchase of a National Casualty policy by virtue of this language,"?

A. No, sir.

Q. I next show you Commission's Exhibit 11(e), and Exhibit 12(d), and ask you to note the material that has been circled. "Surgical operations, whether performed in or out of the hospital, are paid up to three hundred dollars in addition to hospital benefits. Full benefits are paid to all insured members of the family group." Do you recall that language?

A. Yes, sir.

Q. And that material, that statement or language, has

been used in information that has been distributed by the company?

A. That's correct.

Q. For how many years?

A. I am not in a position to say how many years this particular item has been used, but the same intent or benefits—[fol. 231] whatever they may be—has been used since we have been selling surgical insurance.

Q. In other words, language similar to the quoted language has been used over many years?

A. Yes.

Q. And the amounts or other statements which might apply to the specific term of the policy has been changed, but the general tenor of the statement has been used for many years?

A. Yes.

Q. During the course that this statement has been used have you ever had a person who purchased a policy come to you and state they have been misled in the purchasing of such policy by virtue of this language or language of similar purport?

A. No, sir.

Q. Have you ever received any information from any of the heads of your departments, as administrative head of the company, that any person has complained to the company that they were misled in the purchase of a National Casualty policy by virtue of this language or similar language

A. No, sir.

Q. I show you Commission's Exhibit 15(e) and 18(g) and ask you to note the material circled, which material you will find reads as follows: "Surgery bills from five dollars to three hundred dollars for sickness or accident." Are you familiar with that information?

A. Yes, sir.

Q. Has that information or information of similar pur-[fol. 232] port been used by National Casualty Company in its advertising material?

A. Yes, sir.

Q. And for how long a period of time?

A. Since we have been selling surgical insurance.

Q. And during that period of time have you had any insured who had a National Casualty policy come to you and state that they had been misled in the purchase of their policy by virtue of this language or language of similar import?

A. No, sir.

Q. Have you received any information, as administrative head of the company, from the several departments, that someone had complained to the company that they had purchased a National Casualty policy and were misled by virtue of this language to which I called your attention?

A. No, sir?

Q. I show you Commission's Exhibit 6(f) and call your attention to the specific language which has been noted by the Commission in its complaint, which reads as follows:

> "Here is what we would pay you. Monthly income up to three hundred dollars for total disability from sickness paid from first day for two years with no confinement required at any time. Monthly income up to three hundred dollars for total accident or confining sickness disability paid from first day for as long as totally disabled, even for life."
>
> Do you recall that language?

A. Yes, sir,

[fol. 233] Q. That language has been used by National Casualty Company in its advertising material?

A. This particular reference to the particular policy it relates to, yes.

Q. For how long has that language, or language of similar purport, been used by National Casualty Company?

A. Again, as long as that coverage was offered to the public.

Q. During the time that that has been used has any policy holder come to you and indicated that they were misled in the purchase of a policy of the National Casualty Company by virtue of this advertisement?

A. No, sir.

Q. And have you received any information, as the administrative head of the company, through your department heads, that a claim has been presented to the company

indicating that a policy holder was unhappy that he purchased the policy of National, and was misled by virtue of this language?

A. No, sir.

Q. I show you Commission's Exhibit 21(b) and ask you to refer to the matter which has been circled, which matter you will find reads as follows:

"When you are disabled by accident or sickness, what do you need most? Cash. Economy disability policy. The simple economical way to obtain basic income protection. Sound protection—low cost.

"For Accident: Accident income (blank dollars) per [fol. 234] month. Total disability—full monthly benefit for twelve months. Partial disability—one-half monthly benefit for one month.

"For Sickness: Sickness income (blank dollars) per month. Confining total disability—full monthly benefit for six months. Non-confining total disability—full monthly benefit for one month."

Are you familiar with that language?

A. Yes, sir.

Q. And has that language been used by National in its advertising?

A. Yes, sir.

Q. For how long has it been used

A. Since this type of policy has been issued or available to the public.

Q. And during that period of time have there been any complaints which have been made to you, personally, that an insured who had purchased a National Casualty policy has indicated that they purchased it because they were misled by this language or advertising?

A. No, sir.

Q. And have you received any complaint from any of your department heads, as administrative head of the company, indicating that a complaint has been received from an insured who purchased a National Casualty policy, that he or she was unhappy, contending that they were misled in the purchase of the policy by virtue of this language?

A. No, sir.

Q. I show you Commission's Exhibit 8(b), and ask you to [fol. 235] refer to the material which has been circled, and you will find there the language, "Your security. If insured or sick. You are protected while at work or away from work. Benefits paid in addition to compensation and group insurance, twenty-four hour every-day protection. Guaranteed monthly income for accidents. Guaranteed monthly income for sickness."

Are you familiar with that language?

A. Yes.

Q. Has that material been used in the advertising by National Casualty Company?

A. Has it been?

Q. Has it been?

A. Yes, it has.

Q. For what period of time?

A. That I do not know. These cards vary from time to time. I couldn't answer that.

Q. Has language of similar purport been used with reference to similar type of policy?

A. I don't quite understand. You say similar purport? Specifying certain monthly indemnity will be paid for income or by reason of accident?

Q. Yes.

A. Right.

Q. That has been used for how long?

A. "Of similar purport" has been used since we have been selling disability insurance, for years.

[fol. 236] Q. And during that period of time this particular material has been used have you received any complaint from an insured who purchased a National Casualty policy, that they contended they were misled by virtue of this advertising material?

A. No, sir.

Q. Have you ever received information through your several departments, as administrative head of the company, that anyone has complained, who purchased a National Casualty policy, that they were misled by virtue of the language in this advertisement?

A. No, sir.

Trial Examiner Hier: Mr. Korn, Mr. Langs has taken you down over each representation set out in this com-

plaint alleged to be deceptive, misleading and misrepresenting. How vital to your company is the use of those particular representations? What would happen if you voluntarily left them out? To your company's business? Of course, you don't know, but what would you estimate?

The Witness: You mean if you didn't use them?

Trial Examiner Hier: I mean if you didn't use them.

Mr. Langs: If he didn't use these or any advertising?

Trial Examiner Hier: If he didn't use any of these in the complaint?

Mr. Langs: If he didn't use these or used something in the place of it? I am not trying to put words in your mouth. Are you eliminating all advertising?

Trial Examiner Hier: Oh, no, no. I am not eliminating [fol. 237] all advertising. Of course not. But here the Federal Trade Commission says here this material that he has gone over——

The Witness: I get your point. There are certain of those statements that have been taken up that I think are very important, statements of qualifications. We set up a certain thing, and maybe we get a card from a person one year old or a hundred years old if we don't set that up. Other features, if you want accident insurance what would you do? Are they going to give you a hundred dollars a month or two or three? What are they? We have had them ask, "Will you write five hundred dollars a month or a thousand dollars a month?"

We state what we are writing, "How long do you pay? One year, two years or for life?" We state what that particular policy—or what length of time is available on that policy. There may be a few items in there that have been carried through in advertising because of popularity. I don't know. But I think there are some material ones in there that would destroy the knowledge that you are trying to convey to the prospect.

Trial Examiner Hier: What about this specific representation, "No medical examination required"?

The Witness: I don't think that is too important. We have left that out of our circulars in the last two years. As I pointed out, it was quite important when people thought they had to have examinations. I don't think it is material today.

Trial Examiner Hier: The next question I ask you, supposing you put in—put it this way: Supposing you continued to use these representations, but were to add to [fol. 238] them the exclusions which the Commission says make them deceptive, which were in the policy but not in the ad. Those exclusions are set out in Paragraph 5, I think, of the complaint.

Suppose you were to add all of that to your advertising? What effect would that have to your business?

The Witness: That is very easy to answer. Long before the Federal Trade Commission found it necessary to complain against the companies, having been a member of the committee that studied the code of ethics which we adopted, we started doing that as time permitted on our new mailing pieces. As a matter of fact, today we have already—we are talking about something that is non-existent today.

Trial Examiner Hier: In other words, you are doing it now?

The Witness: Yes.

Trial Examiner Hier: It has not destroyed or materially affected your business?

The Witness: We don't know if all companies have followed the same practice, but we think they have. We are all on an equal basis, and we still recite this as available for five, one hundred dollars, whatever it is. I might add, since you have asked that question, one reason why we, and possibly other carriers—although I can't speak for them—may have complaints as alleged—maybe I use the wrong word—the Federal Trade Commission believes or alleges is misrepresentation, is that companies deliver accident and health policies sometimes within twenty-four hours, and I would say at least within a week. If there [fol. 239] is some question as to risk, then the insured has that policy. They don't expect more than that policy, unless there is an intent to deceive or defraud or something else, or a misunderstanding, so the circular becomes a matter of no consideration. They know what they are getting from that policy. They have a copy of the policy. That's why I think my answers, if I have stated correctly, are "no" all of the way through, because within the time the application is received they have a policy to look at.

If they don't choose to keep that policy they can return it in many states, which they do.

In the State of Louisiana we must now make a statement in the policy that this is subject to a ten-day inspection, so advertising would be of no material effect.

Trial Examiner Hier: Go ahead.

Q. (By Mr. Langs) Now, Mr. Korn, I have taken you down through each of these specific items, and where the Commission has picked out certain language and complained about it. Now, without going down through all of them, we have been through them in our conferences in your office and so forth, and you are familiar and are aware of them. Is it true or not that the statements which are set up here are true representations of the material or the effects or benefits of the policy to the extent that they are made? For instance, as a part—just as an example—the statement has been made in the advertising literature, "No medical examination is required". That is a true statement?

Mr. Brookfield: I object to the form of the question, your Honor.

[fol. 240] Trial Examiner Hier: Well, the form is bad.

Mr. Brookfield: The policies speak for themselves, sir.

Trial Examiner Hier: I know that.

Mr. Langs: I am asking him whether or not these are true statements. This is taken from the literature, and whether or not they represent true statements of the information which this company wants to pass out—are they true statements with respect to the policy which you are selling? They are or they are not, is what I want to know.

Trial Examiner Hier: You may answer that.

The Witness: I was a little confused for the moment. We are speaking about advertising material statements, and the attorney for the Government is speaking about what is in the policy. Are we talking about advertising or about a policy?

Trial Examiner Hier: We are talking about advertising statements.

The Witness: They are correct statements.

Trial Examiner Hier: This is not falsity—not a falsity case, as I see it. It is a deceptive or misrepresenting case.

These statements are true under certain conditions, and there are exclusions and other conditions, and that is where you claim deception.

Mr. Langs: You made the statement just now they are true under certain conditions. These statements are true at all times.

Trial Examiner Hier: Well, from one point of view, that's true, yes, but what I am trying to express—undoubt-
[fol. 241] edly I am doing a bad job of it—if the statement is true, but when you take some exclusion into the picture the inference from the true statement which the person may get is not as broad as he thinks it is. That is their case, if I understand it correctly.

Mr. Langs: That, I think, is what their case is, but certainly on the basis of the evidence——

Trial Examiner Hier: I am not saying that is a fact. I am saying that is their case.

Mr. Langs: We do not believe that you can draw inferences which they have indicated here from these statements. These statements are true. The fact that these witnesses have testified that no one who has purchased these policies, and they have sold them in literally hundreds of thousands, that information is in the record which went in under the direct case of the government, literally hundreds of thousands of these policies have been sold, and this advertising material or a similar purport of it has been used and no complaint has come in at all.

Trial Examiner Hier: I understand your position. In the first place, there is no way you can possibly prove that nobody has been deceived or misled, unless you called in this court room I suppose three or four hundred thousand people, some of whom are dead and passed on. The most you can do, I think, is what you are doing, but it is negative evidence. I mean the fact that nobody has complained here doesn't mean that somebody hasn't been mad or gotten irritated or dropped the policy or cussed you out to his neighbor or something else, without making a formal complaint to him.

[fol. 242] Mr. Langs: Well, your Honor, I think we both know human nature enough, and I think it is sufficient to take judicial notice if you have got several hundred thousand people somebody is going to have a grievance, they

are going to raise it. You can't take all of those people and say that none of them would raise a grievance. It just isn't normal. It is normal and natural that somebody would say something about it. That is the reason why people write letters to the public letter box. They have a grievance and they have a squawk. They complain. It is just natural —it just naturally and normally follows that such is evidence of that fact.

Mr. Brookfield: Mr. Examiner, are we going to argue that point now? I would like to put in my two bits' worth.

Trial Examiner Hier: No, you will have your chance later. I will give you plenty of time.

Q. (By Mr. Langs) The question was raised, Mr. Korn, with reference to the schedule of benefits under the surgical policy, as to how it was determined where a particular item was not specifically covered and it used the language "On a commensurate basis", can you indicate the method which the company uses in determining the commensurate basis?

A. Years ago when they developed a surgical schedule they showed specific items. Space did not permit the incorporation of all items of surgery that would be covered or treatment that would be covered under a surgical schedule. We tried to be comprehensive. The schedule as used today has been reviewed by medical examiners, doctors, industry sought their advice, and we picked out what was presumably [fol. 243] a fair representation of average surgery procedures.

In the event an insured has a claim for surgery or medical treatment coming within the scope of the surgical provisions, the company then will pay that loss commensurate with a comparable operation that is so listed. I don't know exactly the procedure. I don't think it is the judgment of the adjuster. I think they discuss that with the medical director to get his opinion as to what that degree or that nature would be a comparable procedure.

Q. After the medical directors of the company indicate what their thinking is on it, is that followed?

A. We pay it accordingly, and if there is still some question the insured may present a statement from the surgeon

showing a more severe operation which would give reason for reconsideration whether a larger amount should be paid.

Q. In other words, that determination is made by the medical director under the assistance of the doctor, so that there can be an actual comparable situation developed from medical knowledge?

A. Yes.

Mr. Brookfield: I object to that question.

Trial Examiner Hier: What?

Mr. Brookfield: That is another leading question.

Trial Examiner Hier: You say it is leading?

Mr. Brookfield: Yes, sir.

Trial Examiner Hier: It is. I will sustain the objection.

[fol. 244] Mr. Brookfield: May the answer be stricken?

Trial Examiner Hier: If the answer was given it may be stricken.

Q. (By Mr. Langs) Mr. Korn, do you have any opinion as to the public's reaction to this literature that we have been discussing here today which has been issued by the National Casualty Company?

A. Only to this extent: The National Casualty Company and other companies—not only those that have had complaints filed—but were extremely surprised that the Federal Trade Commission or their people who had reviewed this came up with such complaints against these provisions.

Q. Do you have any knowledge of any—when I say "public" I mean persons, individuals?

A. Oh, I beg your pardon.

Q. As to their reaction to this literature, other than what you have already given?

A. No, not to my knowledge.

Cross-examination.

By Mr. Brookfield:

Q. Now, you said yesterday you were a member of a committee on ethics which has adopted new advertising material, is that correct, or recommended new advertising material?

A. I was not on that specific committee at the time. I was on the executive committee that approved the action of the sub-committee.

Q. Now, when was this committee set up?

[fol. 245] A. Oh, that was a standing committee of the Trade Association. I don't know. It may have been twenty years or more.

Q. That's a standing committee of a——

A. A trade association.

Q. Insurance committee or insurance trade association?

A. Yes.

Q. What is the name of that committee?

A. The Health and Accident Underwriters' Conference.

Q. Has this committee taken any action recently with reference to advertising?

A. When you say "recently", not—well, they have all through the years, but more effectively back in May, I believe, 1954. They are always watching the so-called standard practice of insurance. That is the purpose of that committee.

Q. And they make recommendations to the members of the Association?

A. That's right.

Q. As to what advertising statements are made?

A. Advertising and all practices may come to their attention.

Q. In May, 1954, they made——

A. The Trade Association adopted the recommendation of that committee.

Q. Of your committee?

A. Not my committee, but the committee of which I was on the executive committee that approved the so-called [fol. 246] sub-committee's recommendation.

Q. Did this committee discuss or revise the type of statements that were read to you yesterday by Mr. Langs?

A. Some of them, yes.

Q. And changed them?

A. Yes, they—apparently they made some modifications, saying they should be changed to some degree and what not, but they didn't specify any specific company's advertising. It was just a general discussion of what might be in adver-

tising and what should not be. It is on record. I think it is called the Ethics Standard Advertising that was adopted.

Q. Was this action taken because there was a feeling that maybe this advertising might have a tendency to mislead?

A. No, I don't believe so. At that time I wasn't a member of the committee. I think it has been the practice of that trade association, as well as others, to try to improve, to the extent the companies could, the members could, the public interest, trying to improve conditions. It not only involved advertising. It involved relationship with the policyholder, the agent and everything else. That comes within the scope of that committee's study. You don't progress without improvement, and of course we are always trying to improve.

Q. Mr. Korn, do you know—and if you don't know——

A. Pardon me?

Q. Do you know whether or not as a result of this report that many companies are putting the conditions and exclu- [fol. 247] sions of their policies in their advertising?

A. Yes, they are. In fact, we are also. To that degree I might add the members adopted this code of ethics set forth by this Business Standards Committee—I forget the exact name—and we started back after May sometime of 1954 to remedy such pieces as we thought were necessarily obsolete, some, change some.

Q. You felt, did you not, that the failure to reveal the conditions and exceptions of the policy might cause the public to expect more coverage than they were going to get from the policy?

A. We didn't feel so, but it was the general opinion if that is what the public wanted it was the—I think to resolve that issue you are asking now was a member of the press, notorious press in some instances started issuing articles, picking out out of context certain phases of the insurance business. We didn't feel it was necessary, but since they chose to take such exceptions we felt that, all right, we will try and do what we can as an industry to improve it.

Q. Mr. Korn, is it not a fact that your accident and health policies are sold to people in all walks of life, and people of varying degrees of education and income?

A. Yes, I imagine so.

Q. You don't cater to any particular grade or class of people?

A. No, other than if they can qualify for the insurance. We might not take imbeciles or things like that, but as far as the public in general, if they have an insurable interest.

Trial Examiner Hier: You say, Mr. Korn, you have been [fol. 248] changing your advertising, including the exclusions and so on and so forth. In this particular case what has been changed?

The Witness: We don't think there is a great deal of change other than we did add the so-called exceptions. We have exceptions in the policy.

Trial Examiner Hier: All of these representations in this trial?

The Witness: Shall we say the phrases used by the FTC, but where we put in the exceptions we have eliminated possibly a word here and there that might denote something else. I have seen the revised ones. We have discussed them, and I am not too familiar with exactly the various points in that regard, but we followed this code of ethics which was adopted back in May of 1954; shall we say it was suggested the companies adopt it. It wasn't mandatory.

Trial Examiner Hier: Do you still advertise "No medical examination required."?

The Witness: No, we do not.

Trial Examiner Hier: Then, as I get the picture, you have voluntarily given up most of what the Commission wants to give up? You don't want the order to do it? You don't want to be found in delicto, so to speak, but you have voluntarily done it?

The Witness: The Trade Association, as I made the comment yesterday, back some twenty or twenty-five years ago, when people thought it was a burden to buy an accident and health policy with an examination, that is, as I made the [fol. 249] statement yesterday, within the last eight or ten years, possibly, people don't think of that, and so why put something in? I don't think it is too material to have it in or out, so where it isn't material we drop it. It wasn't because of the FTC charge. We did that long before that was brought to our attention or any company's attention.

Trial Examiner Hier: How much prior to the institution of this proceeding was that?

The Witness: We started back in—I am not sure if it was back in May or June when we started initially changing—and I think it was early in September or October when we became more specific, having thousands of pieces of various advertising, it took some time to coordinate that.

Trial Examiner Hier: When you sent this material in to the Federal Trade Commission at their request did you advise them of that

The Witness: Advise them of what?

Trial Examiner Hier: That you had changed?

The Witness: No, they asked us to send what pieces we were using at that time. That was back in 1954?

Trial Examiner Hier: It must have been.

The Witness: I believe so. The Spring of '54, but prior to that is when the trade association began their study, and they had been studying it for some time, and they made their suggestion.

Trial Examiner Hier: All right.

Q. (By Mr. Brookfield) Mr. Korn, is it not a fact that the [fol. 250] purchasers of the policies called the company's agents, and in some instances the company itself, and asked for an explanation of the conditions of the policies?

A. You say is it not a fact—. I don't quite get your question.

Q. I will repeat it.

A. Yes, please.

Q. Is it not a fact that purchasers of the company's policies called its agents, or in some instances the company itself, and asked for the explanations of the conditions of the policies?

A. Yes, I imagine so. Yes. They have a policy and possibly they would like a more complete explanation of some parts.

Q. Do you agree with Mr. Tolmich that the purpose of your advertising is to obtain the names of prospects who may be sold policies?

A. Primarily, yes, sir. I say primarily because there are certain pieces that might be termed sales aid. It outlines the benefits of or some of the principal benefits in the policies, and we term them as sales aids.

Q. And those sales aids you are referring to are furnished to your agents to aid them in explaining in selling the policy to people from whom they have gotten leads?

A. That's right. It is an explanation. You can see a few of them there where they get put down, "a hundred a month," or write "two hundred" in there, and they have seen that presentation.

Q. Mr. Korn, do you differentiate in your thinking between any and each, with reference to accidents or sicknesses?

[fol. 251] A. When you say "differentiate", I think that word in general is synonymous. It is "each or any covered", sickness or injury.

Trial Examiner Hier: Suppose Mr. Tolmich inserted the word—I believe he inserted the word "indemnify."

The Witness: That's correct.

Trial Examiner Hier: I gathered that from his testimony.

Q. (By Mr. Brookfield) Mr. Korn, *it is* not a fact that many people of limited education or knowledge of the English language are prospects for your accident and health insurance?

A. You say they buy only hospital?

Q. I will restate the question again. Is it not a fact that people—many people of limited education or knowledge of the English language are prospects for accident and health insurance, and especially prospects for hospitalization insurance?

A. I wouldn't say they are especially prospects for hospitalization insurance, and I wouldn't say there are many. I am no judge of how many are illiterate. Could you answer the question, if I may ask? I don't know how many.

Q. Mr. Korn, this phrase, "I understand this peace of mind and security will be mine from the first day, even for life," would you not say that that conveys to the reader the impression that as long as he pays the premiums he will receive the benefits that are set out in the insurance policy?

A. No, sir. Absolutely not. You couldn't give that con-

[fol. 252] struction to that particular phrase.

Q. What would you say that means?

A. It means in benefits—we use that phrase in life insurance as we do in pension. You can—if you do a certain thing or if you qualify, if you have a certain thing, then you might have peace of mind.

Q. And if you buy this policy and pay your premiums then you have peace of mind, is that it?

A. No, because that particular phrase refers to the benefits you would receive, which would give you peace of mind if you were eligible for those benefits. It doesn't say anything about a policy in that statement.

We don't say "This policy will give you peace of mind." I don't believe that is in the text of that phrase.

Q. Mr. Korn, is it not a fact that any business which is conducted through salesmen is continually faced with the problem that the salesmen let their enthusiasm and desire to produce make statements that would not be approved by the principle?

A. Oh, absolutely, yes, but there are various regulatory bodies. Your State Insurance Department, your qualifications for license, your companies are required to give educations in certain areas. California has a specific requirement they must go through a training course. There is schooling to get your license, so to that degree every effort is extended to keep an agent from making false statements or getting a policy issued on the basis of a false statement of which he is responsible. That will always happen in sales.

Q. No matter how carefully the company is, that happens? [fol. 253] A. I don't think you can eliminate it entirely, because we are dealing with personalities, but when that is disclosed then the companies have the privilege of cancelling the agent's license or the insurance department will.

Q. The accident and health hospitalization business is highly competitive, isn't it?

A. Very competitive.

Q. And each company, including National, attempts to create in the mind of the prospect the idea that its policies offer a little more or more than comparative policies, isn't that true?

A. The particular policy for the premium, yes, and the company behind it.

Q. So that when you say the most complete coverage you convey the idea that the policy covers everything, do you not?

A. No, not necessarily. You are stretching the imagination of the word "complete", aren't you?

Q. I am asking you how you use it.

A. I think you have to put it in context.

Q. "The most complete coverage"?

A. No, I wouldn't say so.

Q. You use that phrase, do you not?

A. Yes, we use it, but you have to take the whole article to which it refers. It is a matter of opinion.

Q. "The most complete coverage at the lowest rates"?

A. That's right. We think it is.

[fol. 254] Q. Then——

A. That particular policy. We are not saying all of them.

Q. The purchaser would certainly be led to believe——

A. That's right.

Q. —that he is getting the most complete coverage?

A. We think he is getting that for that premium with our company.

Q. Now, your lowest rates, that applies to what he pays for it?

A. That's right. Absolutely. It is a matter of opinion.

Q. You don't say "the most complete coverage at competitive rates." You say "the most complete coverage", one sentence, and "the lowest rates".

A. I still say it is a matter of opinion.

Q. And it may be interpreted by you or by me or by a member of the public in three different ways?

A. Maybe so. We say that's what we are thinking, that's what we are trying to sell. You sell a lot of articles, you point out that in your opinion they are the best.

Q. Mr. Korn, you believe your contact advertising sets out the exceptions and limitations of the policies, and this advertising would attract as many prospects as the advertising you have been using over the years?

A. Yes, but I will add one statement to that. I don't know if it will attract as many. I can't say that specifically. We don't think it will hurt too much, but I do think it will cause

a greater degree of misunderstanding by doing it than exists, or that you allege exists.

[fol. 255] Q. Mr. Korn, is it not a fact that the schedule of surgical fees set out in your surgical policies is usually less than the customary and usual charge for those operations?

A. I wouldn't know if it was less. It is what a man buys. He might buy less. Those schedules are presumably standard as approved as standard charges for specific operations of the various doctors' asociations. That's how the companies compile them. In different areas it differs. Your cost differs from one end of the country to the other, and from Metropolitan to Urban, so I couldn't answer that the way you have presented the question.

Q. When were those standards adopted?

A. That has been going on for twenty years or more. Possibly in the surgical field fifteen years, since hospital surgery insurance became prevalent.

Mr. Brookfield: Thank you, Mr. Korn. That's all, Mr. Examiner.

Mr. Langs: Just a minute.

Redirect examination.

By Mr. Langs:

Q. A moment ago, Mr. Korn, in answer to a question about the effect of amending the advertising material you stated that it possibly might make for more confusion or make for more difficulty so far as the prospective purchaser was concerned. Will you elaborate upon that?

A. Very glad to. That's a personal opinion for the reason that the policy governs the company's liability, [fol. 256] what they insure. Anything you put in advertising is not a part of the policy by legal contract, so the inference might be made that you say this is here and this is there. You can't put everything. You can't write the complete policy in an advertisement of any kind, and I am not familiar, but I am quite certain that people and attorneys will try to construe the advertising material as part of the policy because it was stated in such fashion that neither

one—one would be conclusive and the other would not be conclusive of all of the facts in that policy.

Q. And do I understand what you are saying in words a little bit differently, but if you tried to put in, as lawyers, if you tried to put in certain exclusions or certain items into a statement which did not include all of them, sometimes you get into more trouble than if you leave out all of them and allow the legal document to speak for itself?

A. That's right.

Trial Examiner Hier: What has been your experience since you have been doing that for a while?

The Witness: Pardon me?

Trial Examiner Hier: You have been doing that for a while?

The Witness: Yes, but we haven't had any experience sufficient to answer that question. To my knowledge I don't know that that has come up. I am thinking of the legal side of any case, and the policy specifically states that the application and the policy is a complete contract. Now, you can't bring in the advertising material and base a law suit on that contract.

[fol. 257] Trial Examiner Hier: Not on the contract.

The Witness: That's what I am trying to say. Unless you put the whole policy in your advertising or put the advertising as a part of the contract, I don't know where you are going.

Q. (By Mr. Langs) In other words, times will tell what the effect of this will have?

A. That's right.

Q. It is too early at this point to have experience from which you can judge it, is that correct?

A. Yes. This is our opinion. You put in exclusions. They are the principal things that people think about, but the contract has certain terms, possibly certain limitations. Are you going to put them all in a piece of advertising?

Q. Now, a couple of things that I want to cover here quickly——

Mr. Langs: Mr. Examiner, you asked a question a moment ago of Mr. Korn about the recommendations of the Committee of the Trade Association, and the fact that they had been working on it for a long period of time, and then

in May they adopted certain things which this company immediately started to put into effect in the matter of thirty or sixty days thereafter, which was prior to the time of the action which was instituted here by the Federal Trade Commission, and I was well aware of that situation, and that was the reason why I asked in this case for a Trade Practice conference for this company to present to the Federal Trade Commission the evolution of the advertising and what had happened as a result of this committee action and what this company had done with regard [fol. 258] to it before this Federal Trade Commission had undertaken this action.

I simply point that out at this time to indicate why the request was made in the beginning of this case for that conference.

Now, a few questions here, and then I'll—incidentally, we had a question up yesterday concerning a standard provision which is contained in a contract, and which the Federal Trade Commission counsel asked a question about, and then your Honor asked whether or not it was mandatory to be included or excluded, and for the purpose of the record I call attention to Section 522.14 (8), Sub Paragraph 8, of Compiled Laws of 1948 of the State of Michigan. That's section 14—13, 14 and 15—of the law, as it exists and is in effect today. There are changes in this law that are going to become effective as of January 1, 1956, but we are concerned only as it exists today. It provides certain standard provisions which must be set forth verbatim in a health and accident policy, accident and health policy, and this provision number 8, which reads, "The Company shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death, where it is not forbidden by law."

That is mandatory, and in other words, it must be included in the policy under Standard Provisions, and there are fourteen of those standard provisions which must be included under the Michigan law in the policy, and that answers that particular question, and I refer you to the statutory law for coverage.

[fol. 259] I might also point out that in those sections there are certain other what they call optional standard provisions, and those provisions, to the extent they are used, must be used exactly as it is quoted in the language of the statute. They do not have to include them, but if they do include them they have to include them as the language of the statute—as the language of the statute reads.

Q. (By Mr. Langs) Mr. Korn, are you familiar with the specimen policies that are used by the company as to whether they are the standard size or regular size, or are they in reduced form?

A. They are standard size policies. We have—to my knowledge we do not use reduced policies. By "reduced policies" I mean what has been reduced to half or a fourth of the original policy.

Q. The specimen policy looks exactly like the policy which the man will get when he gets his policy? After he buys the insurance?

A. That's true.

Q. At the time of the hearing in the early part of the year, Mr. Korn, you made mention of the fact that you were being examined at that time by the State Insurance Department under the so-called, I think, regional or a conference——

A. Convention examination.

Q. Convention examination. What is a convention examination?

Mr. Brookfield: Mr. Examiner, I submit this it not proper redirect examination.

Trial Examiner Hier: I don't think it is, either, Mr. Langs. He didn't go into anything on cross examination about that.

[fol. 260] Mr. Langs: What I was trying to bring out was to show that the examination had been concluded. That was the important part of that.

Trial Examiner Hier: Sustain the objection, Mr. McGuire.

Q. (By Mr. Langs) One other point which I want to cover, Mr. Korn. In the cross examination and in your direct examination you indicated your experience about

a claim in the claim department in handling this type of insurance, A and H insurance. Right?

A. Yes.

Q. I think you indicated you had spent around twelve years handling claims of accident and health type policies.

A. That's correct.

Q. During that period of time approximately how many claims did you handle?

A. I wouldn't be——

Q. Would it be thousands, hundreds, hundreds of thousands?

A. I had many personally and in charge of the department that handled some eighty or ninety thousand a year.

Q. And that was over a period of twelve years?

A. That's correct.

Q. So in that period of twelve years you had experience, then, of handling probably as many as five hundred thousand claims, or supervising that many claims under your direction?

A. I was aware of them. Let's put it that way.

[fol. 261] Q. And if there was any major complaint or any problem which would arise, certainly that would come directly to you, is that correct?

A. At various stages of the administration, yes. Possibly in the earlier stages I may not know, but to that degree, usually there are conferences on those issues among adjusters, and I think I would have someknowledge of it.

Q. Now, certain of these phrases that the trade commission—Federal Trade Commission—has set forth in its complaint, you have indicated that they are statements which had been used in one form or another for a period of many years.

A. Right.

Q. Did any of those statements which we covered yesterday, one by one—were any of those statements or similar statements in use while you were in the claim work, claim department?

A. Yes, to a degree they were.

Q. And this one particular statement has been used quite a bit in the complaint, "No medical examination required". Just using that as an example, was that phrase used in the

selling of insurance while you were in the claim department work?

A. Yes, it had some use.

Q. While you were in the claim department work did any claim come to your attention during that period of twelve years where a purchaser of an insurance policy in his claim contended that he was misled as to the amount of his claim, or what his claim should be by virtue of the advertising material used which contained this statement, "No medical [fol. 262] examination required"?

A. Not to my knowledge.

Q. Do you recall any contention by an insured who purchased the policy containing any of these statements which were in existence during that period of time that they claimed they were misled as to their claim or their rights under the policy by virtue of the advertising which was used?

A. No, they have never expressed they thought they were entitled to benefits by virtue of what was said in the advertising because they themselves or by advice of counsel recognized that the contract prevailed.

Mr. Brookfield: Object to that question, your Honor.

Trial Examiner Hier: What?

Mr. Brookfield: I object to that answer. That is purely a conclusion "by advice of counsel they recognized the contract prevailed".

The Witness: I said the people recognized.

Mr. Langs: The first part of the answer "no", is a direct answer to the question.

Trial Examiner Hier: The last part is a conclusion of what he thought. The last part may be stricken, and the first part may stand.

Mr. Langs: I believe that's all I have.

[fol. 263] Louis P. Matthews was thereupon called as a witness for the Respondent, and, having been previously duly sworn, testified as follows:

Direct examination.

By Mr. Langs:

Q. Mr. Matthews, you are the same person who testified in the proceeding earlier this year as a witness for the

Federal Trade Commission? They called you as a witness, subpoenaed you in here, is that correct?

A. That is correct

Q. Now, we want to get a little historical background upon your activities in the insurance field. How many years have you been in the insurance business?

A. Over twenty-five.

Q. And during that period of time what type of insurance have you handled? Have you handled A and H, hospital or life, or just what?

A. Practically sold the accident and health insurance.

Q. And during that period of time what type of work have you done in the accident and health field?

A. In the early years I did underwriting, and in the later years, eighteen and a half years, agency work.

Q. And in the underwriting work what did you do?

A. Passed on the acceptability of the risk, according to the application received, saw that the rates were correct, all questions answered. In other words, all work preparatory to the actual issuance of the policy.

Q. What has been your work in the agency field?

[fol. 264] A. In the agency field it has been—of course, the agency field is the sales end of the game, the production. The appointing of agents, ascertaining of ways and means to locate prospective agents, assisting in the recruiting of agents, visiting them on field trips, helping them solve their problems, helping to prepare policies to some degree, assisting in advertising material. That covers it pretty well.

Trial Examiner Hier: It is agreed, Mr. McGuire, between counsel the witness presently on the stand, Mr. Matthews, would, if asked to testify with relation to each advertising representation set out in the complaint, to the same effect as the witness, Peter G. Korn, testified, and with the same cross examination. Is that agreeable, gentlemen?

Mr. Langs: It is agreeable with me.

Trial Examiner Hier: Agreeable?

Mr. Brookfield: Yes, sir.

Q. (By Mr. Langs) .... Now, you have indicated here as a part of the opening questions and answers that you have participated in the preparation of advertising material. What are the things which you give consideration to in preparing that advertising material?

A. In preparing advertising material of course it must be visually attractive. As regards the phraseology, we endeavor to insert the highlights of our policies as they might differ from policies of other companies. Not all other companies, but other companies, so that the recipient will have his interest aroused legitimately to the actual benefits that will be fulfilled by the policy after the advertising is answered, let us say.

[fol. 265] Q. You mentioned that to indicate differences between other companies—well, let me ask you this question. Are there certain provisions which are standard, so far as this company is concerned, and other companies are concerned, writing the same type of insurance?

A. There are certain provisions that are standard, yes.

Q. Do you highlight standard provisions?

A. No, sir.

Mr. Langs: That's all.

Cross-examination.

By Mr. Brookfield:

Q. Mr. Matthews, before the stipulation, you testified in connection with your duties that you go around with individual agents, is that correct?

A. I don't go around with individual agents. I go and visit.

Q. You don't make any calls on prospects with the individual agents?

A. Very rarely.

Q. So that you don't have any contact with these prospects?

A. I wouldn't say I don't have any contact with them, because I do on occasion.

Q. How frequently?

A. That would depend solely upon whether the agent wished my services in that regard.

Q. Well, would you say that it is customary and the usual thing if an agent has a prospect to sell, an eighty-five or [fol. 266] ninety dollar accident and health policy, that you go out and help him sell it?

A. Not necessarily, sir, because our agents are, generally speaking, sufficiently well trained to take care of their own sales work.

Trial Examiner Hier: How many prospects did you call on last month?

The Witness: When you say "last month", I haven't been in the field in the last month.

Trial Examiner Hier: How about the month before?

The Witness: I would say possibly I might see half a dozen prospects in the course of the year, because my field trips are about eight weeks, I believe.

Q. (By Mr. Brookfield) Now, when you do go to these prospects do you take your advertising literature or the literature of the company?

A. The agent already has that.

Q. Wait until I complete my question, please.

A. All right.

Q. And read this literature to them and ask them if it is clear to them.

A. I can answer that very very definitely. I can say this. I can't tell you how many prospects I have seen in the course of eighteen and a half years, but I can say on every call that has been made a specimen policy has been shown, and reviewed with the prospect.

Q. A specimen policy?

A. Definitely.

[fol. 267] STIPULATION RE TESTIMONY OF WILLIAM ZELL

Trial Examiner Hier: All right, Mr. McGuire, in lieu of calling Mr. William Zell to the stand, who was a witness here before, it is stipulated between counsel that he would testify on direct and cross examination, if called, to the same effect as Mr. Korn did, and as Mr. Matthews was stipulated to, with reference to each of the alleged misrepresentations in the Complaint.

Mr. Langs: I believe that concludes the case of the Respondent on the matters in issue, subject, of course, to the motion which we made, and which we reserve the right on that, for any further action which may be necessary.

Trial Examiner Hier: Do you have anything more?

Mr. Brookfield: I think not, Mr. Examiner. I have rested.
Trial Examiner Hier: The case is closed.

[fol. 268] BEFORE THE FEDERAL TRADE COMMISSION

INITIAL DECISION—Entered December 8, 1955

Frank Hier, Hearing Examiner

Complaint herein issued March 11, 1955, charging respondent with misrepresenting its accident and health policies by soliciting their sale through printed brochures and advertisements which stressed or mentioned or mentioned only maximum benefits or coverage while omitting actual policy exclusions or limitations thereby deceiving or misleading prospects into purchasing policies not as extensive or secure as they believed, in violation of Section 5 of the Federal Trade Commission Act (Title 15, U. S. C. A. 45). Answer admitted descriptive facts alleged and denied misrepresentation, and jurisdiction to proceed.

On the issues joined two hearings were held to complete proponent's proof, at the close of which respondent's counsel moved to dismiss the complaint for lack of jurisdiction and insufficient proof to constitute a prima facie case. The jurisdictional attack was two-pronged and founded on the language of so-called Public Law 15, 79th Congress (Title 15, U. S. C. A. 1011-15). The contentions were that since respondent is a Michigan corporation and Michigan by statute expressly prohibits the acts of alleged in the complaint there was none of respondent's business that was not "regulated by State law," and that even if the Michigan statute be held to have no extraterritorial regulation that, nevertheless, respondent's business was fully regulated by the separate law of each state where it does business. The first contention was denied substantively, the second solely because at least one state where respondent does business, Mississippi, admittedly has no regulation whatever. The [fol. 269] second ground of the motion that no prima facie case had been shown was denied on the merits, and subsequently two additional hearings were held for the reception of respondent's evidence, proof taking was closed and proposed findings of fact and conclusions were submitted

by all counsel, on consideration of which, with the rest of the record herein, the Hearing Examiner finds that this proceeding was brought in the public interest and makes the following:

Findings as to the Facts

1. Respondent National Casualty Company is a corporation organized, existing and doing business under the laws of the State of Michigan with its office and principal place of business at 422 Majestic Building, Detroit 26, Michigan. It is a stock company incorporated for the purpose of selling accident, health, and all types of casualty insurance, being licensed to sell such policies in all States of the United States, the District of Columbia, and Hawaii, through resident agents located therein. The company does not sell life insurance and its casulty insurance is not involved in this proceeding. In 1953 respondent received premiums of $15,519,025 and in 1954 premiums of $16,208,154 on its accident and health policies.

2. Respondent uses the agency system of selling its insurance policies by solicitation from 350 to 400 direct but independent insurance agencies throughout the nation who operate under contract of the respondent on commission only, in nonexclusive territories, and for this purpose respondent prepares, sends and ships to these agents direct [fol. 270] mailing cards, stuffers, one page lead sheets, form letters, applications with tear sheets and throw aways. The majority of this is shipped by mail to the agent in bulk for his use and dissemination. Something less than five percent of respondent's direct mail advertising is disseminated by respondent directly from its own offices in Detroit to members of the public on behalf of its agents, and at their request, to obtain leads from prospects. Generally, the company bears the expense of printing advertising prepared by it but the agent assumes the cost of dissemination. The record does not show exactly what printed material was mailed directly by respondent from Detroit to prospects, as hereinafter found in Paragraphs 9, 12, 15, 19 and 23. All it shows is that something less than five percent of respondent's business was done that way. For the purposes of this discussion therefore, it is assumed that some of those mailings were of the printed material hereinabove found to be misleading or deceptive.

3. Eighty percent or more of all respondent's accident and health policies are issued by it from its home office after receipt, checking, and consideration by it of the prospect's signed application which has been secured by the agent. Any policy issued by respondent is forwarded to the agent for delivery to the insured. A very small number of respondent's agents may issue policies directly but respondent's home office has subsequent veto power over them after consideration of the application and policy which have been forwarded to it by the issuing agent.

4. Respondent now maintains and for the past several years has maintained substantial course of trade in insurance policies in commerce as "commerce" is defined in the [fol. 271] Federal Trade Commission Act between and among each of the States of the United States.

5. Premium collection is the agent's responsibility, only five percent or less being remitted directly to the respondent, and this because of unusual or temporary situations. Premium notice forms are printed by respondent and furnished free of charge to all agents who mail them out locally. Very few such notices are mailed by respondent directly.

6. To procure business, these agents mail locally respondent's direct mailing pieces to likely prospects, secure leads thereby and otherwise, then call and personally solicit the prospect, or they are distributed personally by the agent. Although respondent's advertising pieces exemplified in the record may be primarily for the agent's aid and benefit in his solicitation, there is no doubt that they are also shown in a substantial number of instances to prospects to induce purchase and with that effect. Respondent's agents may locally advertise also but only with prior approval by respondent's home office. The latter does not furnish leads to its agents except on rare occasions. Occasionally also, it will mail out advertising direct from Detroit at the request of some agent because of temporary or unusual circumstances which make it more feasible to do so than to have the mailing done by the agent. Respondent's renewal business is just as important to respondent as its new business.

7. The insurance commissioner of Michigan inspects respondent's acts, practices, and files about every four years

but this inspection is primarily the accounting phase of respondent's business and respondent's officials do not know whether respondent's advertising is examined or not. Respondent's officials have nothing to show approval of re- [fol. 272] spondent's advertising by the Michigan insurance commissioner. In any event it was never submitted to him for approval. Respondent does not submit its advertising to the insurance commissioner of the State of Michigan for approval before it is used. Respondent's business was not inspected by the insurance commissioner of the State of Michigan during the time covered by the complaint herein. By mutual agreement of counsel the years 1953 and 1954 are the period involved.

8. To arouse interest in, and induce purchase of its insurance policies, respondent, in the manner indicated above has made numerous statements and representations in its advertising pieces. Those alleged to be false, deceptive or misleading by the complaint herein, fall roughly into five categories: (1) termination date; (2) physical condition; (3) complete coverage; (4) dollar amounts; (5) specific time covered.

9. Under the first category respondent has represented:

"No increase in premium because of age"
"No decrease in benefits because of age"
"Lifetime accident benefits"
"For employed men and women ages 16 to 69 years inclusive"
"Life indemnity accident coverage"
"For individuals or family groups—ages 1 day to 69 years"
"Security plan with lifetime benefits"
"I understand this peace of mind and security will be mine from the first day—even for life"
"We have removed all age termination limits from the policy"

[fol. 273] 10. Some of these circulars were distributed by respondent directly or through its agents in all states and the District of Columbia. Respondent's officials testified that the statements set out in Paragraph 9 supra, are representations with respect to benefits, not duration; that they were used to differentiate respondent's policies from

policies of other companies which have age limitations more narrow than respondent's and to overcome any impression of these narrower limits which might have been built up in the public mind by old advertising of others when the limitations were more narrow.

11. Whatever the intent, these statements can reasonably be expected to give a substantial number of readers the definite impression that the policy will continue in effect so long as premiums are paid at least until age 69, or even for life, with full indemnification. To those past 45 years particularly this is a most material and important consideration. The fact is that respondent's policies all provide that they may be terminated by respondent at its sole option at the end of any premium period. Two of these policies may be cancelled at any time by respondent. The finding is that the representations made are deceptive and misleading.

12. The second category or alleged misrepresentations involves the statement "no medical examination required" appearing in ten different circulars distributed by respondent in all states and the District of Columbia. It has been used by respondent for 14 years or more, and by accident and health companies for 20 years. Respondent adopted it because accident and health insurance has become widespread only in the last twenty-five years. In its early days, [fol. 274] people had the impression that because life companies required a preliminary medical examination, respondent would also. People "hesitated buying it because they feared it might require a medical examination." "I think it has been (used) merely primarily, let us say, to convey to people that you could get this insurance without going through a lot of red tape."

13. The quoted statement is unqualified as to time, condition or circumstances. Yet respondent's policies all provide that no benefits will be paid for loss resulting from sickness, the cause of which is traceable to a condition existing prior to, or within 15 to 30 days after the effective date of the policy, and that "the company shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pending of any claim hereunder." Respondent's accident policies require that "the loss shall result directly and inde-

pendently of all other causes'' to show which, the insured may have to submit medical evidence, obtainable only by medical examination.

14. Medical examinations are a groundless fear to many people, especially those approaching or in middle age, when functional degenerations set in. They are a nuisance to others. To everyone, any statement about a medical examination is most material. It would have been a simple and inexpensive matter to have added the words ''before issuance of the policy'' to the quoted statement. The bare representation carries, in the Hearing Examiner's opinion, the definite impression that respondent insures without regard to the prospect's physical condition either before or after issuance of the policy. Such being not the fact the statement is definitely misleading and deceptive. [fol. 275] 15. Under the third category in Paragraph 8 supra, respondent has represented that its policies provide:

> ''The most complete and broadest coverage at the lowest rates''
> ''Monthly benefits up to $300.00 per month paid from first day of sickness or accident plus $300.00 per month for hospitalization''
> ''Hospital room and board for 100 days for each sickness or accident. Your choice of plans paying from $5.00 to $12.50 per days. Pays full benefit even if your hospital room costs less''
> ''Guaranteed monthly income for sickness''
> ''Guaranteed monthly income for accidents''
> ''When I am sick $600.00 a month as long as three months''
> ''New modern all-inclusive hospital surgical nurse protection''
> ''Occupational and non-occupational accident fully covered''
> ''Full coverage on or off the job''
> ''Full coverage for female diseases''
> ''You should be fully protected against these expenses''

16. The policies, to sell which, these representations were issued, contain exclusions and limitations which belie ''most complete'' or ''broadest coverage,'' ''fully pro-

tected," "first day of sickness," etc. This indemnity for sickness is payable only for one "which is contracted or begins after this policy has been in force not less than thirty days from its date." Preexisting illness as well as illness during the first thirty days of policy life is consequently excluded. Excluded also are sickness caused by venereal [fol. 276] disease, injury resulting from air travel on other than a scheduled or common carrier, suicide or its attempt, self inflicted injuries, diseases or accidents to the female organs, injuries or illness occurring outside the United States and Canada. Indemnity payments are limited (reduced benefits) when illness or accident is due to tuberculosis, paralysis, hernias, female disease or mental derangement. Some exclude benefits for sickness or accident covered by Workmen's Compensation Acts, others pay only proportional indemnity, if other insurance is carried. Sickness or accidental injury must wholly and continuously disable and prevent the insured from performing any and all duties pertaining to his or her occupation. Specified indemnities for loss of limb or eye provide for immediate and automatic termination of the policy upon payment thereof. In each instance, these exclusions, exceptions and limitations appear in some of respondent's policies, in some instances, in all of its policies exhibited in the record.

17. Advertising pieces containing the excerpts set out above were disseminated either by direct mail (something less than five percent) or shipped to agents and by them distributed in all states in some instances, in a number of states in other instances.

18. The discrepancies between promise and policy set out in Paragraphs 15 and 16 supra, are obviously material and in the opinion of the Hearing Examiner may well be reasonably expected to give a prospect an impression of wider and fuller coverage than he gets. To that extent they are deceptive and misleading.

19. In the category of "dollar amounts" respondent has represented in its advertising pieces, financial benefits for loss, as follows:

[fol. 277] "Surgical operations, whether performed in or out of the hospital, are paid up to $300.00 in addition to hospital benefits. Full benefits are paid to all insured members of the family group"

"Surgery bills from $5.00 to $300.00 for sickness or accident"

"Pays surgical operation expenses $300.00"

"Surgical plan to $300.00".

"Three choices of surgical operation benefits; $5.00 to $150, $7.50 to $225.00, $10.00 to $300.00"

"Your doctor's bills paid at home, at hospital, at doctor's office"

"$10.00-$300.00 available surgical operation fees"

"Pays surgical operation fees up to $150.00"

"Who pays these bills? You should be fully protected against all these expenses. Never before has such protection been offered"

20. Counsel in support of the complaint contended that these statements give the impression that respondent's policies to which they apply "provide indemnification for all operations necessitated by any one case of sickness or accident up to a maximum of $300," and point out that those same policies do not in all cases provide for payments of $50.00 or $300.00 for surgical operations but contain a schedule of rates providing the maximum for only six of the operations listed and that operations for tonsils, adenoids, appendicitis, hernia or hemorrhoids are not paid for unless they occur more than six months after the date of the policy. The contended for "impressions" seem to this Hearing Examiner to be far-fetched and not reasonably to be expected. He does not get the impression from the quoted excerpts that respondent will pay the maximum for all operations—the words "up to" clearly imply in [fol. 278] plain English a sliding or flexible scale of payment, nor is there anything in the quoted excerpts which reasonably gives the impression that all surgery is indemnified, or if it is, that payment will be made immediately or at any given time.

21. Most of the representations set out above in Paragraph 19 were distributed in all states, others only in some states.

22. The finding is that the representations set out in Paragraph 19 above are not deceptive or misleading.

23. The last category of alleged misrepresentations "specific time covered" are exemplified by the following:

"Monthly income up to $300.00 for total disability from sickness paid from the first day for two years with no confinement required at any time"
"Monthly income up to $300.00 for total accident or confining sickness disability paid from first day for as long as disabled—even for life"
"When you are disabled by accident or sickness—what do you need most?

Cash!

Economy Disability Policy

The simple economical way to obtain basic Income Protection

Sound protection—low cost

For —— Accident income $ —— per month
Accident
Total Disability—full monthly benefit for 12 months
Partial Disability—1/2 monthly benefit for one month
[fol. 279] For —— Sickness income $ —— per month
Sickness
Confining total disability—full monthly benefit for six months
Non-confining total disability—full monthly benefit for one month"

"Your security——

If injured or sick ——
you are protected while at work or away from work—benefits paid in addition to compensation and group insurance—24 hour every day protection"
"Guaranteed monthly income for accidents.
"Guaranteed monthly income for sickness."
"Monthly benefits up to $300.00 per month paid from first day of any sickness or accident"
"Sickness indemnity: total disability full monthly indemnity for two years"

24. These representations reasonably give the impression of indemnification in a specific amount for a definite period

of time. "From the first day for two years," "From the first day as long as totally disabled—even for life," "Accident income $—— per month," etc., reasonably convey that impression.

25. Respondent's policies themselves, however, confer the indemnity promised only if the insured is wholly and continuously disabled by sickness and prevented thereby from performing any and every occupation or employment plus being under the personal attendance of a doctor. Obviously, there is much illness and disability which does not meet these requirements, especially during convalescence. Some of respondent's policies require continuous confinement to the house, before respondent will pay. Other exclusions are any indemnity for more than one month where loss is due to tuberculosis, hernia, paralysis, or mental [fol. 280] derangement; no sickness which began before thirty days after policy issuance; disability arising more than 5, 20, or 30 days after the accident; maternity benefits only after policy has been in effect ten months—in other words, respondent gets ten months' premiums before it has to pay for loss of time for maternity. All of these exceptions, exclusions, and limitations, seem to the Hearing Examiner to be highly important to substantial segments of prospects, and unlikely to occur to them as exceptions. The representations reasonably give the impression of definite amounts for a definite time, and to that extent are misleading and deceptive.

26. All of these representations were distributed in a substantial number of states.

27. Respondent's executive vice-president, its director of agencies, its claims adjuster, and its general agent in Detroit, Michigan, all of whom had been in the accident and health insurance business for many years, all testified that they had never personally received any complaint from any insured or from any prospect as to being misled or deceived by any of respondent's representations; that no such complaint had come to them officially through company channels; that no such complaint had ever been received from the insurance commissioner of any state; and that many of these representations had been used up to 20 years, all of them over a period of years. This, of course, is not conclusive. Deception may have occurred without resulting in

written or formal complaint and there may have been complaints also to local agents which were not forwarded to respondent. Furthermore, this evidence at most goes only to show an absence of actual deception. Under many decided cases, actual deception is not essential, [fol. 281] it is sufficient if there is a reasonable probability of deception. Bockenstette vs F.T.C. 134 F2d 369, 371; Empire Oil & Gas Corp. vs U.S. 136 F2d 868, 872; Jacob Siegel Co. vs F.T.C. 150 F2d 751, 755. That respondent's advertising was used largely to distinguish its coverage from those of life companies, or those of other health and accident companies is immaterial, as is the fact that there was no deliberate intent to deceive. Intent is immaterial *in* this type of case. F.T.C. vs Algoma Lumber Co., et al 291 U.S. 67, 81.

28. Respondent also defends on the basis of abandonment or voluntary cessation. The record shows that respondent is a member of the Health and Accident Underwriters Conference, that a standing subcommittee on ethics and practices prepared a code of ethics for such insurance practice, including advertising, that such code was thereafter adopted by the executive committee of the conference in May 1954, of which executive committee, respondent's executive vice-president was then, and had been, for many years a member. The record further shows that thereafter respondent began to discard and discontinue such of its printed material as came within the condemnation of that code, although some of them are still in use. On that basis, respondent claims this proceeding to be moot and not in the public interest and moves dismissal.

29. Dismissal on this ground is discretionary with the Commission—it is not a matter of right, nor does it defeat jurisdiction. Sears Roebuck Co. vs. F. T. C. 258 F 307-10; F. T. C. vs. Standard Educational Society, et al 86 F2d 692, 697; National Silver Co. vs. F. T. C. 88 F2d 425, 427; Hershey Chocolate Corporation vs. F. T. C. 121 F2d 968, 971; [fol. 282] Philip R. Park vs F. T. C. 136 F2d 428. The very fact that an industry committee saw in this printed material the reasonable probability that it might mislead, even though there had been no complaint thereof to respondent in 10-20 years, reinforces the examiner's opinion that, some of it, as above set out, does so. Respondent's discontinu-

ance confirms this. There is nothing in the record to indicate it may not be resumed, in the same or dangerously similar form. The record shows that these "sales aids" are constantly undergoing change, revision, discontinuance, replacement with new ideas, etc. The public interest requires, it seems to this examiner, that it be made sure that it cannot be resumed in any manner.

30. The protection which this respondent sells, while not so vital as life insurance, is nevertheless as important to the insured as his income. An insurance policy is an intangible, incapable of sensory perception like furniture or clothing. It is a series of mental images, imperfectly conveyed by words. "One picture is worth a thousand words" or as Mr. Dooley described documents generally, decades ago—just a "mess of words." The sheer quantity of language in a policy is per se confusing to a layman. The pressure for conciseness and precision, produces, plausibly plain but actually technical language. Expressions such as "due proof of loss;" "if any time limitation of this policy with respect to give notice of claim or furnishing proof of loss is less than that permitted by the law of the state;" "resulting from accidental bodily injury effected directly and independently of all other causes" have rather definite meanings to lawyers, underwriters, and claims adjusters but are not fully understood by laymen. As the Court said in U. S. vs Sylvanus, 192 F2d 96, "It goes without saying almost that [fol. 283] it is extremely difficult for a layman to understand the terms and conditions of such policies as these * * *." Similar judicial comments are legion. Hence respondent's argument that its agents carry specimen policies when selling and sometimes, or always, show them to prospects, is of little merit. As the same Court said on this point "That the policy holders by reading their policies, might have ascertained the conditions and limitations contained therein would not alter the fact, that the policies had been misrepresented, nor would it absolve defendants from responsibility for having made and transmitted such misrepresentations." For these same reasons, the guardian of the public interest in preventing misrepresentation or even misapprhension must be more vigilant, more careful, and more stringent than in other cases of alleged misrepresentation.

Conclusions of Law

1. The complaint herein rests jurisdiction in this proceeding on Public Law 15, 79th Congress (15 U. S. C. A. 1011-5) known as the McCarran Act, the pertinent provisions of which are as follows:

> 1. "That the Congress hereby declares that the continued regulation and taxation by the several states of the business of insurance is in the public interest and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States."
>
> 2. (a) The business of insurance, and every person therein, shall be subject to the laws of the several states which relate to the regulations or taxation of such business.
>
> (b) No act of Congress shall be construed to invalidate, impair or supersede any law enacted by any state for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such act specifically relates [fol. 284] to the business of insurance, Provided, that after June 30, 1948, the act of July 2, 1890, as amended, known as the Sherman Act, and the act of October 15, 1914, as amended, known as the Clayton Act, and the act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by state law.

Respondent has contended from the inception of this proceeding, and now contends, that its business is fully regulated by state law and that, therefore, the Federal Trade Commission is without jurisdiction in this proceeding. The factual basis in this proceeding behind the phrase "to the extent not regulated by state law" is that 36 states have enacted the so-called "Model Code" or "Unfair Trade Practice Model Bill." This "Model Code" was enacted to implement the above-quoted McCarran Act, and prohibit as illegal, the dissemination of false, deceptive or misleading statements regarding insurance in terms as broad as

Section 5 of the Federal Trade Commission Act, and at the same time in far more specific terms as well. The prohibition is implemented by appropriate enforcement and penalizing provisions, so that any licensed local agent may be haled before the state insurance commissioner to show cause why his employer's license to sell insurance in that state should not be revoked because of misrepresentation. In the opinion of the Hearing Examiner, they are fully effective to stop, within the state, the acts and practices charged here. Being an exercise of police power, these statutes obviously have no extraterritorial effect. In addition to these 36 states, eight others have statutes which, while couched in different language or varying somewhat in [fol. 285] detail, are essentially the same in effect as the "Model Bill." Of the remaining five states[1] one—Mississippi—has no "regulation" of the insurance business at all, and remaining four have only statutes which patently refer only to life insurance companies, which this respondent is not.

2. Respondent's contention of no jurisdiction is two-pronged. First, it urges that being a creature of Michigan law, the "Model Code" of that state effectively controls its every activity, intrastate or interstate. This claim of extraterritoriality was rejected as unsound in the denial of respondent's motion to dismiss made at the close of the case in chief, and is again rejected for the reasons then stated. But respondent next urges that, even so, its business is fully regulated by state law wherever it does business. Since it does business in every state and since it is not regulated in any way in Mississippi, this contention was heretofore rejected on its motion to dismiss, but the question of the "extent" of jurisdiction was not decided.

3. Counsel supporting the complaint contend for concurrent jurisdiction nation-wide, notwithstanding the McCarran Act. The contention is that Congress did not intend thereby to delegate its jurisdiction over interstate commerce to the states, that at most it gave the states concurrent jurisdiction within their borders over the same acts and practices, that the states cannot "effectively" regulate such

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[1] Sec. 5 of the McCarran Act defines the District of Columbia as a state.

[fol. 286] acts. The logical end-result of this contention, of course, is that if every state had enacted the "Model Code," so that there was not a square yard of territory under such state law and, therefore, no "extent that such business is not regulated by state law," that nevertheless, there is Federal Jurisdiction. Another effect of this contention would necessarily be, that if the insurance commissioner of Pennsylvania, after summons and hearing, acting under Pennsylvania's Model Code, decides that respondent's representations are not false or misleading, nevertheless, the Federal Trade Commission, the next day, could decide that it was. This flies in the very teeth of the McCarran Act's prohibition that "no act of Congress shall be construed to invalidate, impair or *supersede* any law enacted by any state, etc." How it can be contended that such action under the Federal Trade Commission Act does not invalidate, impair or supersede the action under the state law is not made clear.

4. Reams of disquisition have appeared in the public print—law journals, reviews and trade magazines, briefs in other companion cases, as well as the briefs in this case—on this jurisdictional bone of contention. Even to summarize such a flood, would only proliferate beyond patience to peripateticism. Suffice it to say, that Public Law 15, particularly Sections 1 and 2(a), its legislative history, its announced and obvious intent, the language used by the Supreme Court in construing it in Prudential Insurance Company vs Benjamin 328 U.S. 408, 420-1, 429-30, convince [fol. 287] the Hearing Examiner that the intent of Congress in enacting it was to give to the states, if they chose to exercise it, full regulation of the insurance business in all its phases, except where such state regulation was as a matter of law, impossible or clearly ineffective, such as the situation reflected in U. S. vs. Sylvanus 192 F 2d 96—state law being obviously incapable of control over the United States mails. The Hearing Examiner is also of the opinion that the provisio in Section 2(b) of Public Law 15 was intended only to prevent a vacuum—that is, to provide Federal regulation where no state regulation had been enacted.

5. Applied then, to the case at bar, this means that the Federal Trade Commission has jurisdiction and power to stop respondent from disseminating by mail the something

less than five percent of its business directly to prospects, the representations hereinabove found to be deceptive and misleading, and likewise has jurisdiction and the power to stop respondent from transmitting to its local agents in Mississippi, Rhode Island, Missouri, Montana and the District of Columbia, for local dissemination, or use by them in those states, such misrepresentations, but that there is no jurisdiction over respondent's similar acts and practices with its agents in the other states of the Union.

6. The acts and practices of respondent, as hereinabove found, and as hereinabove limited, are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act, as that act is [fol. 288] applicable to respondent's business under the provisions of Public Law 15, 79th Congress.

ORDER

It Is Ordered that respondent National Casualty Company, a corporation, and its officers, agents, representatives and employees, directly, or through any corporate or other devise, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and in Public Law 15, 79th Congress (15 U. S. C. A. 1011-5) of any accident, health, hospital or surgical insurance policy do forthwith cease and desist from disseminating by mail directly to the public, or disturbing to its agents located in Mississippi, Rhode Island, Montaina, Missouri or the District of Columbia any circular, announcement, mail card, advertising piece, or other printed material which represents, directly or by implication:

1. That any insurance policy may be continued in effect by the insured upon payment of stipulated premiums, indefinitely or for any stated period of time unless any other provision or condition of termination contained in the policy appears therewith clearly conspicuously, coincidentally and contiguously.
2. That no medical examination is required, unless there appears therewith coincidentally, contiguously, clearly and conspicuously all policy provisions

and conditions under which such medical examination may be required.

[fol. 289] 3. The extent or duration of either coverage or benefits payable, unless all exceptions, exclusions, limitations or provisos relating thereto, contained in the policy, clearly, conspicuously, coincidentally and contiguously, appear therewith.

(s) Frank Hier, (t) Frank Hier, Hearing Examiner.

December 6, 1955.

[fol. 290] BEFORE THE FEDERAL TRADE COMMISSION

NOTICE BY RESPONDENT OF INTENTION TO APPEAL THE HEARING EXAMINER'S INITIAL DECISION—Filed December 27, 1955

Now comes John F. Langs, attorney for the respondent, National Casualty Company, and hereby gives notice of intention to appeal the Hearing Examiner's initial decision filed December 8, 1955, in the above-entitled proceeding.

Respectfully submitted, National Casualty Company, By (s) John F. Langs, Attorney for Respondent, 2504-16 Guardian Building, Detroit 26, Michigan, WOodward 2-9460.

Date: December 24, 1955.

[fol. 291] BEFORE THE FEDERAL TRADE COMMISSION

NOTICE BY FEDERAL TRADE COMMISSION OF INTENTION TO APPEAL THE HEARING EXAMINER'S INITIAL DECISION — Dated December 19, 1955

Come now counsel in support of the complaint and hereby give notice of intention to appeal the hearing examiner's initial decision filed December 8, 1955, in the above-entitled proceeding.

Respectfully submitted, John W. Brookfield, Jr., Donald K. King, Counsel Supporting the Complaint.

Dated this 19th day of December, A. D. 1955.

[fol. 292] BEFORE THE FEDERAL TRADE COMMISSION

OPINION OF THE COMMISSION—May 21, 1956

By Secrest, Commissioner:

This is a proceeding in which the respondent was charged with having misrepresented the coverage and benefits afforded by its health and accident insurance policies. After appropriate hearings, during which evidence in support of and in opposition to the charges was received and a number of motions to dismiss the complaint were denied, the hearing examiner filed his initial decision from which both counsel in support of the complaint and the respondent have appealed. Presented for review are the examiner's findings and conclusions both as to the extent of the Commission's jurisdiction over the respondent's advertising practices and as to the tendency and capacity of the representations involved to mislead and deceive.

The respondent, a Michigan corporation, is licensed to sell, and does sell, its health and accident insurance policies in all of the states of the United States and in the District of Columbia and Hawaii. It carries on its business through an agency system composed of some 350 to 400 agencies located in each of the several states, and the respondent prepares and sends to its agents, for dissemination to prospects, advertising material in the form of direct mail cards, stuffers, lead sheets, form letters, applications with tear sheets and "rowaways. In addition, and at the request of its agents, the respondent disseminates something less than five percent of its direct mail advertising directly from its own offices in Detroit to members of the public located throughout the country. As a [fol. 293] general rule, the company issues its policies from its home office after receipt of signed applications therefor which have been obtained and forwarded to it by the agents, and the policies, when issued, are mailed to the agents for delivery to the purchasers.

For the purpose of inducing the purchase of its insurance policies, the respondent, in the manner indicated, has made numerous statements and representations with respect to the coverage and benefits provided by the policies. The complaint alleged that certain of these were false and

deceptive and that the dissemination thereof constituted a violation of the Federal Trade Commission Act. Grouping the challenged representations into five categories, the examiner found that those in four of the categories were deceptive and misleading, while those in the fifth were not. He held further, however, that the Commissioner's jurisdiction extends only to the respondent's advertising disseminated by direct mail and to its transactions in Mississippi, Rhode Island, Missouri, Montana and the District of Columbia, and he restricted the operation of the order to cease and desist contained in his initial decision accordingly.

The basis of the hearing examiner's conclusion as to the Commission's limited jurisdiction is that Congress, in enacting the McCarran-Ferguson Act (Public Law 15, 79th Congress, 15 U. S. C. A. § 1011-15), gave to the states, if they chose to exercise it, full regulation of the insurance business in all its phases (except where such state regulation is, as a matter of law, impossible or clearly ineffective, such as control over the United States mails), and that each of the states other than those named fully regulates the business of insurance by legislative enactment, with the [fol. 294] result that as to transactions in such states the Commission's jurisdiction has been withdrawn. On this question the Commission, on April 24, 1956, fully expressed itself in its decision in the matter of *The American Hospital and Life Insurance Company*, Docket No. 6237. The views there stated are equally applicable here, and for the reasons set forth in that decision the examiner's conclusions in this case on the jurisdictional question are rejected.

This leaves for consideration the examiner's decision on the merits. As stated in the initial decision, the respondent's advertising representations which were alleged to have been false and deceptive had to do with continuation of the policies, physical condition of the insureds, extent of coverage, dollar amounts payable for operations, and time periods for which monthly payments could be expected. As to all except those dealing with dollar amounts payable for operations, the examiner held that the representations have been misleading and deceptive. With re-

spect to the representations concerning dollar amounts payable for operations, his holding was otherwise.

Contending that its advertising statements, when read in context, are literally true and, further, that evidence of actual deception is lacking, the respondent in support of its appeal relies principally on the arguments (1) that the questioned advertising was disseminated almost exclusively in states having laws regulating the business of insurance and (2) that the use of certain of the other material has been abandoned pursuant to a code of advertising ethics adopted by the Health and Accident Underwriters Conference, of which the respondent is a member, rendering [fol. 295] the issuance of an order to cease and desist unnecessary.

The hearing examiner's conclusions that the respondent's claims and representations are misleading and likely to be deceptive are not seriously contested. The fact that certain of the statements, when considered alone, may be true, is no justification for their use where the over-all impression created thereby is false. *P. Lorillard Company v. Federal Trade Commission*, 186 F. 2d 52 (C. A. 4, 1950). As said by the Supreme Court in *Donaldson, Postmaster General v. Read Magazine, Inc., et al.*, 333 U. S. 178, 188 (1948):

> "Advertisements as a whole may be completely misleading although every sentence separately considered is literally true. This may be because things are omitted that should be said, or because advertisements are composed or purposely printed in such a way as to mislead."

Nor is it necessary that actual deception be proved or found in a proceeding under Section 5 of the Federal Trade Commission Act. A showing that the advertisements in question have a tendency or capacity to deceive is all that is required. *Progress Tailoring Co., et al. v. Federal Trade Commission*, 153 F. 2d 103 (C. A. 7, 1946). And this, we think, the examiner correctly found to be the case.

In its decision in the matter of The American Hospital and Life Insurance Company, the results of which are applicable here, the Commission held that the respondent's advertising representations disseminated in interstate

commerce are subject to the Commission's jurisdiction regardless of the existence of state regulations covering the intrastate dissemination of the same material. The fact [fol. 296] that the respondent, prepared, assembled and mailed to its agents in the various states, for local distribution, advertising material containing all of the statements alleged to have been false is undenied, and there can be no doubt that by so doing the respondent was engaging in an interstate commercial activity. In the view the Commission takes of its jurisdiction, the further fact that some of the representations may not have been made in states not having regulatory statutes is wholly immaterial, and the respondent's argument on this point is accordingly rejected.

The contention that the proceeding is moot and devoid of public interest because of discontinuance of use of certain of the representations is likewise without merit. As pointed out by the examiner, dismissal of a proceeding on the ground of discontinuance is discretionary with the Commission. In the exercise of its discretion, the Commission must necessarily consider, among other things, whether there is a likelihood that the practice found to have been unlawful will be resumed in the absence of an order prohibiting it—and this, in turn, is governed by "all the facts which include the attitude of respondent towards the proceedings, the sincerity of its practices and professions of desire to respect the law in the future and all other facts." *Eugene Dietzgen Co. v. Federal Trade Commission*, 142 F. 2d 321, 330 (C. A. 7, 1944), cert, denied 323 U. S. 730. The record discloses that of the 45 separate pieces of advertising material introduced into evidence, containing statements of the kind alleged in the complaint to have been deceptive, 28 were still being used as of the date the complaint was issued. Moreover, it has been the respondent's contention throughout this proceeding that its [fol. 297] advertising, including advertising it no longer uses, has not been deceptive or in any manner unlawful; and the respondent has offered no assurances of any kind that it will not resume the use of all of the questioned representations once this proceeding is disposed of. The respondent's argument that "The strongest assurance and purchasing public can have that it will be treated fairly

will be found in an aware dedication of a company to its public responsibility" is not convincing in the light of the numerous claims which have been found on this record to have been false and deceptive, and the Commission is in full agreement with the examiner that the public interest requires the issuance of an appropriate order to cease and desist under these facts.

In paragraphs 19 to 22, inclusive, of the initial decision, the examiner discusses the respondent's advertising statements with respect to the dollar amounts payable to its policyholders for losses due to operations. These statements, the complaint alleged, and counsel in support of the complaint now contends, are false and deceptive because they represent, contrary to fact, that the policies provide indemnification for each and every operation up to an amount of $300. The examiner, however, being of the opinion that the contended for impressions are "far-fetched" and "not reasonably to be expected," read the statements as meaning that some, but not necessarily all, of the insured's surgical expenses will be paid on a sliding scale or schedule ranging from $5.00 to $300.00, and accordingly found that the statements accurately reflect the coverage provided by the policies. The question for determination now is which of these conflicting points of view is more nearly correct.

[fol. 298] The respondent's advertising statements of financial benefits payable under its policies for losses due to operations are as follows:

> "Surgical Operations, whether performed in or out of the hospital, are paid up to $300.00 in Addition to Hospital Benefits. Full benefits are paid to all insured members of the family group."
>
> "Surgery Bills from $5.00 to $300.00 for sickness or accident."
>
> "Pays surgical operation expense up to $300.00."
>
> "Surgical plan—to $300.00."
>
> "Three choices of surgical operation benefits $5.00 to $150.00, $7.50 to $225.00, $10.00 to $300.00."
>
> "Your Doctor Bills Paid at Home, at Hospital, at Your Doctor's Office."

"$10 to $300 Available Surgical Operation Fees."

"Pays surgical operation fees up to $150.00."

"Who Pays These Bills? You Should Be Fully Protected against All These Expenses. * * * Never Before Has Such Protection Been Offered."

The policies to which these statements refer clearly do not provide for payments up to $300 for every operation, but have attached to them riders containing schedules of various amounts payable for specified types of operations (at least two of the policies have the schedules included in the policies themselves). The number of operations covered by the schedules varies from forty-seven in the case of one to ninety in the case of two others, and the number for which the maximum amount of $150 or $300 is payable (depending on the amount of premium paid) varies from two in some instances to six in some of the others, with [fol. 299] the operations for which payments of $25.00 or less are provided running from 21 to 43. In the case of a tonsillectomy or adenoidectomy, the typical allowance under the schedules is $25.00, and even this amount is not paid, nor will payment be made for an appendectomy, herniotomy, hemorrhoidectomy, or operations for any injury or disease of the female generative organs, unless the rider shall have been in force for not less than six months from date of issue.

In considering a similar situation in *The American Hospital and Life Insurance Company* case, we said:

> "Appraising this advertisement as it is likely to be read by unsuspecting, incautious members of the purchasing public, we gain the impression that the policy will indemnify up to a maximum sum of $150 for any surgical operation serious enough to cost such an amount. Thus, if a tonsillectomy cost $50, we would think it reasonable to expect that one insured by the policy would be protected to that extent. The advertisement is therefore deceptive and misleading in that it promises benefits which the policy does not corroborate."

Our conclusion is no different here. As the courts have uniformly recognized, it is not the trained and experienced

experts who need protection, but the members of the buying public who, in making purchases, are governed largely by appearances and general impressions. Furthermore, the ultimate impression upon the mind of a reader arises from the sum total of not only what is said in an advertisement but also of all that is reasonably implied. *Charles of the Ritz Dist. Corp.* v. *Federal Trade Commission*, 143 F. 2d 676 (C.A. 2, 1944). And it seems obvious to u that the statements referred to, especially when read in conjunction with such superlatives as "The Most Complete Coverage," "Complete Protection," "All Inclusive Hospital—Surgical—Nurse Protection," and "Maximum Pro-[fol. 300] tection at Moderate Cost," which have also appeared in the respondent's advertisements, are almost certain to mislead readers into thinking they are getting protection which the policies do not provide. The respondent's practice of describing in its advertising the maximum benefits that may be received under the policies without disclosing the schedule of payments for which the policies actually provide is thus unfair and deceptive within the meaning of the Federal Trade Commission Act.

The appeal of counsel supporting the complaint is granted, the appeal of respondent is denied, and the initial decision will be modified in conformity with this opinion.

Commissioners Gwynne and Mason dissented.

May 21, 1956.

[fol. 301] BEFORE THE FEDERAL TRADE COMMISSION

FINAL ORDER—Issued May 21, 1956

Counsel in support of the complaint and respondent, National Casualty Company, having respectively filed their cross-appeals from the initial decision of the hearing examiner in this proceeding, and the matter having been heard on briefs and oral argument; and the Commission having rendered its decision granting the appeal of counsel in support of the complaint and denying the appeal of respondent and directing modification of the initial decision in conformity with the Commission's opinion;

It Is Ordered that the following paragraphs be, and they hereby are, substituted for paragraphs 20 to 22, inclusive,

of the findings as to the facts contained in the initial decision:

"20. Through such statemen' , respondent has represented, among other things, that the policies to which they refer provide indemnity up to a maximum sum of $300 for any operation serious enough to cost such an amount.

"Respondent's policies do not so provide. Under the terms of the policies, payments on account of surgical operations are in accordance with a schedule of fixed fees for different types of operations. Of the numerous operations listed, varying with the different policies from forty-seven to ninety, only a very small number (ranging from two to six on the different schedules) call for payments of as much as $150 or $300 (depending on the amount of premium paid). By way of contrast, the operations for which payments of $25.00 or less are provided, regardless of the actual cost to the [fol. 302] policy holder, range from twenty-one in the case of one of the schedules to forty-three in the case of another. Furthermore, according to the terms of the policies, no payments will be made for tonsillectomy, adenoidectomy, appendectomy, herniotomy, hemorrhoidectomy, or for operations for any injury or disease of the female generative organs unless the policy shall have been in force for not less than six months from date of issue. None of these limitations or conditions is disclosed in the advertising.

"21. Most of the representations set out in paragraph 19 were distributed in all states; others only in some states.

"22. Respondent's representations referred to in paragraphs 19 and 20 have the tendency and capacity to mislead and deceive, and, in the absence of an accompanying schedule clearly disclosing the payments for which the policies provide, are false and deceptive."

It Is Further Ordered that the following paragraphs be, and they hereby are, substituted for the conclusions of law included in said initial decision:

"1. The Federal Trade Commission has jurisdiction over all of the respondent's acts and practices alleged in the complaint to be unlawful.

"2. The public interest in the proceeding is clear and substantial.

[fol. 303] "3. The use by respondent of the statements and representations, found herein to be false and deceptive, with respect to the terms and conditions of its policies of insurance, and its failure to reveal the limitations of the coverage of said policies, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce the purchase of said policies of insurance because of such erroneous and mistaken belief.

"4. The aforesaid acts or practices of respondent as above set forth are all to the prejudice and injury of the public and constitute unfair and deceptive acts or practices within the intent and meaning of the Federal Trade Commission Act."

It Is Further Ordered that the following order be, and it hereby is, substituted for the order contained in said initial decision:

"It Is Ordered that respondent, National Casualty Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as 'commerce' is defined in the Federal Trade Commission Act, of any accident, health, hospital or surgical insurance policy, do forthwith cease and desist from representing, directly or by implication:

"1. That any such policy may be continued in effect by the insured upon payment of stipulated premiums, [fol. 304] indefinitely or for any stated time, unless full disclosure of any other provision or condition of termination contained in the policy is made conspicuously, prominently, and in sufficiently close conjunction with the representation as will fully relieve it of all capacity to deceive.

"2. That no medical examination is required, unless the respondent actually insures the policyholder without regard to his physical condition before or after is-

suance of the policy; or otherwise representing that the condition of the insured's health at the time of issuance of the policy will not be considered by the respondent in determining its liability thereunder, or that the respondent will not, as a claims practice, require proof of good health of the insured at the time of issuance of the policy.

"3. That any policy provides for payment in full or in any specified amount or for payment up to any specified amount for any medical, surgical or hospital service, unless the policy provides that the actual cost to the insured for that service will be paid in all cases up to the amount represented, or unless full disclosure of the schedule of payments for which the policy provides is made conspicuously, prominently, and in sufficiently close conjunction with said representation as will fully relieve it of all capacity to deceive.

"4. The extent or duration of either coverage or benefits payable under the terms of any policy, unless [fol. 305] a statement of all the conditions, exceptions, restrictions and limitations affecting the indemnification actually provided is set forth conspicuously, prominently, and in sufficiently close conjunction with the representation as will fully relieve it of all capacity to deceive.

"It Is Further Ordered that respondent, National Casualty Company, shall, within sixty (60) days after service upon it of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied therewith."

It Is Further Ordered that the initial decision of the hearing examiner, as modified herein, is hereby adopted as the decision of the Commission.

By the Commission, Commissioners Gwynne and Mason dissenting.

(s) Robert M. Parrish, Secretary. [Seal.]

Issued: May 21, 1956.

[fol. 306] IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR REVIEW OF ORDER OF THE FEDERAL TRADE COMMISSION—Filed July 25, 1956

To the Honorable Judges of the United States Court of Appeals for the Sixth Circuit:

Your Petitioner, National Casualty Company, a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal place of business located at Detroit, Michigan, respectfully presents its petition for a review of the Order of the Federal Trade Commission issued in the above entitled matter, Docket No. 6311, dated May 21, 1956 and served on Petitioner on May 31, 1956, wherein Petitioner was ordered to cease and desist from certain practices alleged and found to be in violation of the Federal Trade Commission Act (Title 15 U.S.C. §41, et seq.)

This petition for review is filed in this Court pursuant to Title 15 U.S.C. §45(c).

Petitioner, which is engaged in the business of selling accident and health insurance policies through an agency system composed of some 350 to 400 general agents or agencies located in each of the several States of the United States, printed certain advertising material, the majority of which was shipped by mail to its agents for dissemination to prospective customers and in addition about five percent was disseminated by direct mail from the home office to the public for and on behalf of its agents.

On March 11, 1955 the Federal Trade Commission issued its complaint in which Petitioner was charged with the dissemination of false and misleading advertising pertaining to its health and accident insurance policies in violation [fol. 307] of the Federal Trade Commission Act as limited by the McCarran Act which provides that the Federal Trade Commission Act "shall be applicable to the business of insurance to the extent that such business is not regulated by State law" (15 U.S.C. §1012).

Forty-five States, including the State of Michigan from which Petitioner received its charter, have enacted statutes regulating casualty insurance advertising.

Petitioner respectfully represents:

1. That there is no area in which Petitioner's insurance advertising practices are not regulated by State law and therefore, under the McCarran Act, the Federal Trade Commission was and is without jurisdiction to issue the complaint or the order against which this petition for review is directed, and the conclusion of the Federal Trade Commission as set forth in paragraph 1 of its Conclusions of Law as contained in its final Order that it has jurisdiction over all of the Petitioner's acts and practices alleged in the complaint to be unlawful is contrary to the law under the undisputed facts in this case.

2. That the findings and conclusions of the Federal Trade Commission that the advertising or representations of the Petitioner as referred to have the tendency and capacity to mislead and deceive or are deceptive, false or misleading or give the impression contrary to the provisions of the policies sold, as set forth in paragraphs 11, 14, 16, 18, 20, 22, 24 and 25 of the Initial Decision as amended and adopted in its final Order are not supported or based upon any substantial or credible evidence, have no foundation either in fact or in law and are wholly unwarranted under [fol. 308] the record in this case.

3. That the conclusions of the Federal Trade Commission as set forth in Paragraphs 2, 3 and 4 of its Conclusions of Law as contained in its final Order have no foundation either in fact or in law and are contrary to the evidence and wholly unwarranted under the record in this case.

4. That Petitioner will set out and elaborate in its Brief all of the points upon which it relies as provided under the Rules.

Wherefore, your Petitioner prays that the aforesaid Order of the Federal Trade Commission be review by this Honorable Court and that upon such review the said cease and desist order of the Federal Trade Commission entered in their Docket No. 6311 against Petitioner be set aside and held for naught. Petitioner prays for such other and further relief as to the Court may seem meet and just.

Langs, Molyneaux & Armstrong, By (s) John F. Langs, 2508 Guardian Building, Detroit 26, Michigan, Attorneys for Petitioner, National Casualty Company.

[fol. 309] IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—February 18, 1957 (omitted in printing)

IN THE UNITED STATES COURT OF APPEALS

JUDGMENT—June 6, 1957

On petition to review an order of the Federal Trade Commission,

This cause came on to be heard on the transcript of the record from the Federal Trade Commission, and was argued by counsel.

On Consideration Whereof, It is now ordered, adjudged and decreed that the order of the Federal Trade Commission be and it is set aside and the case is remanded to the Federal Trade Commission for further proceedings consistent with the opinion herein.

[fol. 310] IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

NATIONAL CASUALTY COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent.

PETITION TO REVIEW AN ORDER OF THE FEDERAL TRADE COMMISSION

OPINION—June 6, 1957

Before: Simons, Chief Judge, Allen and Miller, Circuit Judges.

Miller, Circuit Judge. The petition seeks a review of an order of the Federal Trade Commission requiring the petitioner to cease and desist from engaging in acts and

practices in the conduct of its insurance business found by the Commission to be unfair and deceptive, in violation of the Federal Trade Commission Act, as amended. Sect. 45(a)(1)(6) and (c), Title 15, U.S. Code.

The complaint filed by the Commission alleged that the petitioner in the course of its interstate business of selling accident and health insurance and for the purpose of inducing purchases and such insurance policies, was making statements and representations concerning the benefits of said policies of insurance which were false and deceptive, were to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce v thin the meaning of the Federal Trade Commission Act. Petitioner by its answer admitted that it had advertised its accident and health insurance policies as charged in the complaint, but denied that its advertising was false or misleading, or was to the prejudice and injury of the public, or that it had violated the Federal Trade Commission Act. The petitioner affirmatively alleged that the Commission was without jurisdiction over its interstate insurance business because of states statutes [fol. 311] regulating unfair and deceptive acts or practices within the respective boundaries of the states, within the scope and meaning of the McCarran Act, Sections 1011-1015, Title 15, U. S. Code.

At the hearings which followed, the facts were shown to be as follows. Petitioner is a stock company incorporated under the laws of Michigan for the purpose of selling accident, health and all types of casualty insurance, with its principal office in Detroit, Michigan. It is licensed to sell such policies in all states of the United States, the District of Columbia and Hawaii, throug resident agents located therein. It sells its insurance policies by solicitation from 350 to 400 direct, but independent, insurance agents throughout the nation, who operate under contract on commission only. Petitioner prepares and sends to these agents, direct-mailing cards, advertising material and applications. The agents mail locally or distribute personally this material to likely prospects, secure leads thereby and then call and personally solicit the prospect. A small percent of direct mail advertising is sent by petitioner from its offices in Detroit

to the public. 80% or more of petitioners' accident and health policies are issued by it from its home office after receipt, checking and consideration by it of the prospect's signed application which has been secured by the agent. Any policy issued by petitioner is forwarded to the agent for delivery to the insured. Premium notice forms are printed by the petitioner and furnished to the agents who mail them out locally. Premium collection is the agent's responsibility, only 5% or less being remitted directly to the petitioner in case of unusual or temporary situations.

The Hearing Examiner held that four of the five categories of advertising set forth in the complaint were unfair and deceptive as alleged. He held that the Commission's overall interstate jurisdiction was limited to the four states and the District of Columbia which had no statute regulating unfair or deceptive acts or practices in the business of insurance within their respective boundaries. He also held that the Commission had jurisdiction in all states over the advertising practices of petitioner to the extent that its deceptive advertising material was disseminated by the petitioner by the use of the United States mails. He issued a Cease and Desist order to that effect.

Upon appeal, the Commission reversed the Examiner in part, holding by a three-to-two decision that it had full jurisdiction over the interstate sale of insurance by [fol. 312] means of unfair and deceptive advertising practices, irrespective of whether the state had adopted a local law regulating such practices within its boundaries. Since, in our opinion, this case will be disposed of one the jurisdictional issue, it is unnecessary to discuss petitioner's contentions that its advertising was not false or misleading and that the proceeding and the issuance of a Cease and Desist order did not serve any public interest. The jurisdictional question involves the construction and application of the McCarran Act referred to above

The background giving rise to the McCarran Act is important.

In 1869, the Supreme Court upheld the validity of a Virginia statute which regulated foreign insurance companies, on the ground that the statute did not offend the Commerce Clause of the U. S. Constitution because "issuing a policy

of insurance is not a transaction of commerce." *Paul* v. *Virginia*, 8 Wall. 168, 183. Thereafter, in similar cases, the Supreme Court consistently ruled that the business of insurance was not commerce. In *New York Life Insurance Company* v. *Deer Lodge County*, 231 U. S. 495, 503-504, 510, the Supreme Court, as late as 1913, held to this view, stating in its opinion in that case that "contracts of insurance are not commerce at all, neither state nor interstate." However, in 1944, the Supreme Court in *United States* v. *South-Eastern Underwriters Association*, 322 U. S. 533, a case involving alleged violations of the Sherman Anti-Trust Act, again considered the question and in a four-to-three decision, held that the business of insurance conducted across state lines was interstate commerce subject to regulation by Congress under the Commerce Clause.

The Supreme Court's decision was vigorously protested in the insurance field. The insurance companies, relying upon the court's previous rulings, had engaged in practices which were prohibited under the federal anti-trust laws but which were permitted under the laws and regulations of the various states. The states feared the loss of large revenues under their laws taxing insurance sold within the states, which, under the new ruling, might be held discriminatory of interstate commerce and, therefore, unconstitutional. As a result of this vigorous reaction to the decision, Congress passed the so-called McCarran Act in 1945. This Act provides in part as follows:

"*Sec. 1.* Congress declares that the continued regulation and taxation by the several States of the business [fol. 313] of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

"*Sec. 2.* (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business. (b) No act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the busines of insurance: *Provided*, That

after January 1, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

"*Sec. 3.* (a) Until January 1, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, and the Act of June 19, 1936, known as the Robinson-Patman Anti-discrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof. (b) Nothing contained in this Act shall render the said Sherman Act inapplicable to any agreement, to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

"*Sec. 4.* Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1955, 1935, as amended, known as the National Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938, or the Act of June 5, 1920, known as the Merchant Marine Act, 1920."

The petitioner contends that the purpose of the Act was generally to restore the insurance business to the situation existing prior to the decision in the *South-Eastern Underwriters* case, and that in states in which the insurance business was regulated by state law, such business was not subject to regulation by the Federal Trade Commission. [fol. 314] The Commission does not challenge the validity of any state statute regulating the business of insurance, nor the validity of the McCarran Act. It points out that state laws have no extra-territorial effect and cannot regulate the business of insurance beyond the borders of the particular state; that prior to the *South-Eastern Underwriters Association* case, the states were authorized to regulate the intrastate aspects of the insurance business, even though state regulation might affect interstate com-

merce in insurance; that following the decision in the *South-Eastern Underwriters Association* case there was a field of interstate business of insurance which the states could not regulate and which Congress did not intend to leave unregulated; that in enacting the McCarran Act, Congress intended only to authorize the states to exercise their police power in the same manner they had exercised it when the business of insurance was not considered to be commerce, and gave the states until January 1, 1948, later extended by statute to June 30, 1948, in which to define a reasonable area of state police power, beyond which they could not go; that after that date the Commission was authorized to regulate insurance on different grounds, namely, regulating the use of the interstate channels of commerce; and that the Federal and state laws in the field of insurance supplement and reinforce one another in order to provide full protection to the public.

The wording of the Act clearly indicates that, regardless of the ruling in the *South-Eastern Underwriters Association* case, Congress did not intend to take from the states the regulation of insurance within the state. Section 1 declares that "the *continued* regulation . . . by the several states of the business of insurance is in the public interest, . . ." (emphasis added). Section 2 states, "The business of insurance . . . shall be subject to the laws of the several states which relate to the regulation or taxation of such business." The real question is, to what extent, if any, did Congress provide for federal regulation in addition to state regulation.

The Act is equally clear, by the express wording of Section 3, that until January 1, 1948, subsequently extended by amendment to June 30, 1948, the business of insurance was not subject to the Federal Trade Commission Act or certain other federal regulatory acts. After January 1, 1948, according to Section 2 of the Act, the Federal Trade Commission Act and the Sherman and Clayton Acts were made "applicable to the business of insurance to the extent that such business is not regulated by state law." That is the only express grant of power to the Fed- [fol. 315] eral Trade Commission over the business of insurance contained in the Act. It is a grant expressly limited by its terms to insurance business which "is not regulated

by state law." We do not find in those words the "clear and specific grant of jurisdiction" to the Federal Trade Commission which the Commisison claims is given to it by the Act. On the contrary, we find the logical and reasonable conclusion from the two sections to be that jurisdiction over the business of insurance was granted to the Federal Trade Commission after January 1, 1948, *only* where the business was not regulated by state law.

There is some merit in the Commission's contention that since the decision in the *South-Eastern Underwriters Association* case there is a field of interstate insurance, outside the jurisdiction of the states, which should be subject to federal regulation. But it does not follow that it was the purpose of the McCarran Act to accomplish such result, desirable though it might be. Congress realized that by reason of the Supreme Court decision federal jurisdiction existed over the interstate business of insurance. The enactment of the McCarran Act was to correct that situation. It expressly prohibited the exercise of such jurisdiction for a period of approximately three years. After that period it made a restrictive grant of jurisdiction. In order to sustain the contention of the Commission, we must imply a broader grant of jurisdiction to the Commission after the three-year period than is contained in the express words of the Act. We do not believe that Congress would leave to implication such an important segment of the overall question of jurisdiction which it was dealing with, when it could easily have been provided for by express words. A construction of the Act does not sustain the contention.

Section 4 of the Act provides that nothing contained in the Act shall be construed to affect the application to the business of insurance of the National Labor Relations Act, the Fair Labor Standards Act or the Merchant Marine Act. If it was intended by the Act to retain in or give to the agencies of the Federal Goverment jurisdiction over insurance companies engaged in interstate commerce, irrespective of its regulation by state law, this section of the Act was unnecessary and meaningless since the acts referred to would be applicable by reason of the Supreme Court's decision without the provisions of Section 4.

It is probable that in the regulation of the business of insurance by both the federal and state governments there

[fol. 316] will develop a conflict of policies. The parties agree that in such event the federal regulation would control. If so, "the continued regulation and taxation by the several states," referred to in Section 1 of the Act as being in the public interest, would no longer exist.

The general purpose of restoring to the states the right to regulate the business of insurance as it existed prior to the 1944 decision was carried out by the moratorium provided by the Act until January 1, 1948. During the moratorium there was no jurisdiction over the business of insurance in the Commission. During that period the states which did not have such laws had the necessary time in which to pass regulatory legislation. The tie-in between the moratorium and the obvious invitation to enact regulatory legislation while it existed, both recognized the need of regulating the business of insurance and indicated an intention to permit the states to do it to the exclusion of the federal government if they elected to do so. It seems more logical to conclude that it was the purpose of the moratorium to deprive the federal agencies of their newly acquired jurisdiction over the business of insurance in order to restore such jurisdiction to the states if they elected to assume it, than to conclude that it was the purpose of the moratorium to deprive the agencies of their newly acquired jurisdiction for only a short period of time after which it would be given back to them regardless of what the states did on the mean time.

This construction of the Act is in accord with statements by Senator McCarran on the floor of the Senate on February 26 and 27, 1945, in connection with the Senate's consideration of the Conference Report on S. 340. Senator McCarran stated: "The moratorium would not be continued, but if in the meantime the states themselves had regulated the business of insurance, the Sherman and Clayton Acts and the other acts would not become effective." He also said: "During the 3-year moratorium the states may, if they see fit to do so, enact legislation for the purpose of regulation. If they do enact such legislation, to the extent that they regulate, they will have taken the business of insurance out from under the Sherman Anti-Trust Act, the Clayton Act, and

the other acts. If during the moratorium the states do not enact legislation for regulatory purposes, then on January 1, 1948, the Sherman Act, the Clayton Act, and the other acts will become immediately applicable." 91 Cong. Rec. 1441-1444.

[fol. 317] The Supreme Court, since the passage of the Act, has expressed similar views. In *Prudential Insurance Co.* v. *Benjamin*, 328 U.S., 408, 429-431, the court said: "Obviously Congress' purpose was broadly to give support to the existing and future state systems for regulating and taxing the business of insurance." It referred to the nation-wide existence of state systems of regulation and taxation and to the great difference in scope and character of the regulations imposed and of the taxes exacted. It then said: "Congress could not have been unacquainted with these facts and its purpose was evidently to throw the whole weight of its power behind the state systems, notwithstanding these variations." Continuing with the discussion, it later said, ". . . it clearly put the full weight of its power behind existing and future state legislation to sustain it from any attack under the commerce clause to whatever extent this may be done with the force of that power behind it, subject only to the exceptions expressly provided for." In a later case, *Maryland Casualty Co.* v. *Cushing*, 347 U.S. 409-413, the court said: "Suffice it to say that even the most cursory reading of the legislative history of this enactment makes it clear that its exclusive purpose was to counteract any adverse effect that this court's decision in *United States* v. *South-Eastern Underwriters Association*, 322 U.S. 533, might be found to have on state regulation of insurance." In *Wilburn Boat Co.* v. *Fireman's Insurance Co.*, 348 U.S. 310, 319, the court in reviewing the enactment of the McCarran Act said: "Passage of the bill followed *United States* v. *South-Eastern Underwriters Assn.*, *supra*, holding that, despite the constitutional doctrine embodied in the *Paul* v. *Virginia* line of cases, Congress had power under the Constitution to regulate interstate insurance transactions. In the *South-Eastern* case, however, all the opinions had emphasized the historical fact that states had always been free to regulate insurance. The measure Congress passed shortly thereafter, known

as the McCarran Act, was designed to assure that existing state power to regulate insurance would continue."

In making its ruling the Commission followed its prior ruling in *The American Hospital and Life Insurance Company* case, which at that time had not been reviewed by the Court of Appeals. On April 9, 1957, following the argument on appeal and submission of the present case, the Court of Appeals for the Fifth Circuit handed down its opinion on its review holding that the Commission was without jurisdiction in the matter and setting [fol. 318] aside the Cease-and-Desist Order in that case. *The American Hospital and Life Insurance Co.* v. *Federal Trade Commission*, . . . F. (2d) . . ., C.A. 5th. We agree with the ruling of the Court of Appeals in that case.

We are of the opinion that the Federal Trade Commission was without jurisdiction to regulate the insurance business of the petitioner in those states where such business is regulated by state law. The order of the Commission is set aside and the case remanded to the Commission for further proceedings consistent with this opinion.

[fol. 319] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 320] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including September 6, 1957.

William J. Brennan, Jr., Associate Justice of the Supreme Court of the United States.

Dated this 23d day of August, 1957.

[fol. 321] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1957

No. 435

FEDERAL TRADE COMMISSION, Petitioner,

vs.

NATIONAL CASUALTY COMPANY

ORDER ALLOWING CERTIORARI—November 12, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted. The case is consolidated with No. 436 and a total of two hours allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE, 484124